

**THE CORNWALL
PUBLIC INQUIRY**



**L'ENQUÊTE PUBLIQUE
SUR CORNWALL**

Public Hearing

Audience publique

Commissioner

The Honourable Justice /
L'honorable juge
G. Normand Glaude

Commissaire

VOLUME 325

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709 Cotton Mill Street
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K6H 7K7

Tenue à:

Salle des audiences
709, rue de la Fabrique
Cornwall, Ontario
K6H 7K7

Wednesday, December 17, 2008

Mercredi, le 17 décembre 2008

Appearances/Comparutions

Mr. Peter Engelmann	Lead Commission Counsel
Ms. Brigitte Beaulne	Registrar
Ms. Mary Simms	Commission Counsel
Ms. Suzanne Sinnamon	
Mr. Peter Manderville	Cornwall Community Police
Ms. Reena Lalji	Service and Cornwall Police Service Board
Mr. Neil Kozloff	Ontario Provincial Police
Ms. Diane Lahaie	
Ms. Gina Saccoccio Brannan, Q.C.	
Ms. Leslie McIntosh	Attorney General for Ontario
Mr. Peter Chisholm	The Children's Aid Society of the United Counties
Ms. Helen Daley	Citizens for Community Renewal
Mr. Dallas Lee	Victims' Group
M ^e Gisèle Levesque	Diocese of Alexandria-Cornwall and Bishop Eugene LaRocque
Mr. Michael Neville	The Estate of Ken Seguin and Doug Seguin and Father Charles MacDonald
M ^e Danielle Robitaille	Mr. Jacques Leduc
Mr. William Carroll	Ontario Provincial Police Association
Mr. Frank T. Horn	Coalition for Action
Mr. Larry O'Brien	Mr. Randy Millar
Mr. Murray MacDonald	
Dep. Comm. Christopher Lewis	

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1 --- Upon commencing at 9:34 a.m./

2 L'audience débute à 9h34

3 **THE REGISTRAR:** Order; all rise. À l'ordre;
4 veuillez vous lever.

5 This hearing of the Cornwall Public Inquiry
6 is now in session. The Honourable Mr. Justice Normand
7 Glaude, Commissioner, presiding.

8 Please be seated. Veuillez vous asseoir.

9 **CHRISTOPHER LEWIS, Resumed/Sous le même serment:**

10 **THE COMMISSIONER:** Thank you. Good morning,
11 all.

12 **DEP. COMM. LEWIS:** Good morning.

13 **THE COMMISSIONER:** Good morning, Deputy
14 Lewis.

15 **MS. DALEY:** Good morning, sir.

16 --- **CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR**

17 **MS. DALEY:**

18 **MS. DALEY:** Good morning, Mr. Lewis. My
19 name is Helen Daley. I am counsel to a group with standing
20 at this Inquiry called the Citizens for Community Renewal,
21 whose principal interest is institutional reform. A few
22 questions for you.

23 First of all, just to clarify, your
24 involvement as -- your involvement with Project Truth as
25 Director of CIB was obviously only a four-month affair. Is

1 that fair enough, sir?

2 **DEP. COMM. LEWIS:** Yes.

3 **MS. DALEY:** You were there between October
4 2000 and February '01.

5 **DEP. COMM. LEWIS:** Exactly.

6 **MS. DALEY:** And during that period of time
7 were you Pat Hall's direct supervisor in relation to
8 Project Truth issues?

9 **DEP. COMM. LEWIS:** It's difficult to
10 describe the reporting relationship there. Ultimately I
11 was his boss but he also dealt with the Deputy Director to
12 a fair degree ---

13 **MS. DALEY:** All right.

14 **DEP. COMM. LEWIS:** --- who, as I explained
15 yesterday, is of equal rank but somewhat in a supervisory
16 role, but for all intents and purposes on paper I was Pat
17 Hall's boss, yes.

18 **MS. DALEY:** All right. Regardless that
19 normally, I guess -- was it your expectation during the
20 time you were involved that if Mr. Hall encountered any
21 serious difficulties with Project Truth matters he would
22 bring them to you for your help?

23 **DEP. COMM. LEWIS:** To me or to Detective
24 Inspector Grasman and then ultimately to me from there.

25 **MS. DALEY:** All right. So you would have

1 expected to hear in that manner about any matters that were
2 of great concern to Mr. Hall?

3 **DEP. COMM. LEWIS:** That's correct.

4 **MS. DALEY:** And I take it your role was to
5 assist him or to provide guidance to the extent necessary
6 if he had a serious problem.

7 **DEP. COMM. LEWIS:** That's correct.

8 **MS. DALEY:** Now, I'll come back to that
9 theme in a moment but I just want us to agree on something
10 else. I take it, sir, that you understood the Project
11 Truth mandate to include allegations made by Constable
12 Dunlop concerning the existence of a paedophile ring in
13 Cornwall. You were aware that that was part of what
14 Project Truth was to deal with?

15 **DEP. COMM. LEWIS:** I was.

16 **MS. DALEY:** And the concept there was there
17 was fear that there was a group of people acting in concert
18 and sexually abusing young people?

19 **DEP. COMM. LEWIS:** I was aware that was an
20 allegation that was made, yes.

21 **MS. DALEY:** Right. And what was germane to
22 that allegation would be, for example, circumstances where
23 perpetrators of abuse know one another or have common
24 victims?

25 **DEP. COMM. LEWIS:** I hadn't thought

1 specifically at that time what that might mean, that kind
2 of that -- the word "ring" was used, et cetera, but I
3 certainly would consider more than just knowing one another
4 and having common victims ---

5 MS. DALEY: All right.

6 DEP. COMM. LEWIS: --- as being an organized
7 ring.

8 MS. DALEY: Did Mr. Hall ever tell you that
9 in his mind at least the investigation pertaining to that
10 element, the existence of a group of people, could only be
11 conducted once there were at least two, if not more,
12 convictions of people for sexual abuses?

13 DEP. COMM. LEWIS: No, he never told me
14 that, that I remember.

15 MS. DALEY: All right. Do you remember any
16 discussion with him about that aspect of Project Truth;
17 that is to say the so-called paedophile group allegations?

18 DEP. COMM. LEWIS: No, the discussions we
19 did have largely were around the Crown Law issues,
20 Mr. Guzzo, press conferences and things of that nature.
21 The actual investigation itself, other than Pat telling me
22 that they had completed their investigation unless other
23 victims came forward, and that there was no evidence to
24 support there was any organized ring working in the
25 Cornwall area, I don't recall ever speaking about the ins

1 and outs of the actual investigation itself.

2 **MS. DALEY:** Fair enough.

3 Another question for you about the mandate
4 of Truth. I take it you understood that it was part of the
5 mandate to investigate an alleged conspiracy to obstruct
6 justice amongst three entities: The Crown, the local
7 police -- that's the Cornwall Police -- and the Diocese.
8 You were aware that that was also part of Project Truth's
9 mandate?

10 **DEP. COMM. LEWIS:** I was. I was aware that
11 that was one of the briefs that he was at that time
12 awaiting a decision from Crown Law on.

13 **MS. DALEY:** Precisely. One of the issues
14 that Mr. Hall repeatedly brought to you was waiting for
15 decisions on Crown briefs, and you understood that the
16 conspiracy brief was one of those items?

17 **DEP. COMM. LEWIS:** I did.

18 **MS. DALEY:** It follows then that in relation
19 to that part of the project, Cornwall Police was a suspect,
20 a potential suspect as a conspirator.

21 **DEP. COMM. LEWIS:** Yes. I hadn't thought of
22 it that way but obviously that falls true if the allegation
23 of that was made.

24 **MS. DALEY:** As was the Crown's Office a
25 potential suspect as a conspirator.

1 **DEP. COMM. LEWIS:** Correct.

2 **MS. DALEY:** And did you appreciate, sir --
3 you've said that you didn't have a vast knowledge of the
4 investigation, but did you have enough knowledge to
5 appreciate that the local Bishop himself, that's Bishop
6 LaRocque, was under investigation for suspected sexual
7 offences?

8 **DEP. COMM. LEWIS:** I was not at that time,
9 that I recall. I've since become aware of that. I've seen
10 that name pop up but the exact allegations I don't recall
11 knowing even now.

12 **MS. DALEY:** At the time you were engaged
13 with Project Truth, that four-month window and I guess a
14 little bit beyond, were you aware that LaRocque was a
15 suspect, or did you only learn that later?

16 **DEP. COMM. LEWIS:** I don't recall if I was
17 at that time. I don't have any memory of that. I've only
18 seen the name since, that I can recall.

19 **MS. DALEY:** It might be helpful to you just
20 to look briefly at Exhibit 2772. This is the document,
21 sir, that tracks the Crown briefs and so what I'm going to
22 be able to show you with this document is the briefs that
23 were outstanding at the time you were involved.

24 **DEP. COMM. LEWIS:** Okay.

25 **MS. DALEY:** It should be Document 702760,

1 Exhibit 2772.

2 DEP. COMM. LEWIS: Right. I have that.

3 MS. DALEY: Do you have that, sir?

4 DEP. COMM. LEWIS: Yes.

5 MS. DALEY: It's called a Brief Log.

6 So if you look -- this is a six-page
7 document and it's numbered in the centre of the bottom
8 "page 1 of 6" et cetera.

9 DEP. COMM. LEWIS: Okay.

10 MS. DALEY: So if I could just take you to
11 page 3 of 6, the name at the top is that of the Bishop, and
12 if you look in the brief tracking section what you'll be
13 able to determine is that that matter was one of the, I
14 think, six outstanding Crown briefs that Officer Hall was
15 concerned about. Do you see that, sir?

16 DEP. COMM. LEWIS: I do.

17 MS. DALEY: Looking at the document, I take
18 it though, doesn't refresh you at all as to what you knew
19 at the time. I take it you didn't know at the time that
20 the Bishop himself was one of the subjects of a Crown brief
21 upon which Mr. Hall was waiting for an opinion?

22 DEP. COMM. LEWIS: I don't recall knowing
23 that. I may have at the time. I just don't remember it.

24 MS. DALEY: All right.

25 DEP. COMM. LEWIS: I think it's important to

1 note as well that my real focus with Pat was all around the
2 press conference, Guzzo and Crown Law.

3 **MS. DALEY:** All right.

4 **DEP. COMM. LEWIS:** And I had 27 other Pat
5 Halls running around the province at the time, so the
6 information overload for that four months was just
7 incredible.

8 **MS. DALEY:** I appreciate that.

9 In addition to the Bishop himself, what this
10 document shows us is that a number of other fairly senior
11 clergy were also the subjects of outstanding Crown briefs.
12 And just to give you an example, sir, if you look at page 4
13 of 6, the name at the very bottom, there's a clergyman
14 whose matter is open. If you look at page 5 of 6, item 24,
15 that's a Monsignor McDougald, so there's another senior
16 priest; item 26, Father Gary Ostler.

17 So the problem, I guess, or the Crown brief
18 problem that Mr. Hall was raising at the time encompassed
19 individuals -- senior members of the Diocese; fair enough?

20 **DEP. COMM. LEWIS:** That's what that shows,
21 yes.

22 **MS. DALEY:** All right.

23 Now, sir, were you aware that for those
24 items that I've just pointed out to you, that is to say the
25 senior clergy, that in fact the OPP investigation

1 ultimately concluded in the briefs submitted that from a
2 police perspective there was no subjective RPG to proceed
3 with charges against those men? Did you know that?

4 **DEP. COMM. LEWIS:** I am not -- I don't
5 recall knowing that at the time. I recall that there was
6 four or five briefs that we were awaiting decisions on, and
7 I knew one of them was the alleged conspiracy issue and,
8 other than that, I don't recall who or what ---

9 **MS. DALEY:** Did you know ---

10 **DEP. COMM. LEWIS:** --- was in them.

11 **MS. DALEY:** Sorry, I didn't want to cut you
12 off.

13 **DEP. COMM. LEWIS:** Sorry, who or what was in
14 those briefs, I just -- I don't recall knowing at this time
15 what I knew then.

16 **MS. DALEY:** Did you know in relation to the
17 conspiracy brief that on that matter, the police view was
18 that there was no subjective R&PG to lay a conspiracy
19 charge?

20 **DEP. COMM. LEWIS:** I was aware of that, yes.
21 I recall that there was no R&PG on the alleged conspiracy.

22 **MS. DALEY:** All right. So just taking that
23 matter as an example, it would have been a completely
24 unexpected occurrence for the Crown to come back to you
25 say, "Well, wait a second, you do have subjective RPG to

1 proceed with that charge" because that's not how the Crown
2 and police interact on matters such as this, is it?

3 **DEP. COMM. LEWIS:** It is not.

4 **MS. DALEY:** All right.

5 **DEP. COMM. LEWIS:** That was an anomaly, in
6 my view, the way that that approach was taken, that these
7 would all be reviewed by Crown law.

8 **MS. DALEY:** The anomaly being that it is
9 simply a matter of policing. That is to say, it's the
10 police officer's own subject belief that determines whether
11 or not RPG exists to lay a charge?

12 **DEP. COMM. LEWIS:** That's correct.

13 Well, there has been times I'm aware of over
14 my career where police officers didn't feel there was R&PG
15 in certain circumstances, and through discussions with
16 others and certain elements of the evidence pointed out,
17 they -- they did form R&PG.

18 **MS. DALEY:** Yes.

19 **DEP. COMM. LEWIS:** I have seen that. I
20 can't say how that might or might not have related to these
21 circumstances.

22 **MS. DALEY:** Right.

23 **DEP. COMM. LEWIS:** But generally speaking,
24 it's the police officer's decision whether there's R&PG to
25 lay a charge.

1 **MS. DALEY:** All right.

2 So in terms of Mr. Hall's concern, which is
3 the absence of a response from the Crown at least on the
4 conspiracy matter, would it not have been possible for him,
5 as a police officer, to say, "Listen, I don't have RPG.
6 I've made a determination the charges aren't appropriate"?

7 **DEP. COMM. LEWIS:** That's always the option
8 for the police, but in this -- in these circumstances, my
9 understanding was that there was an agreement they would be
10 reviewed by Crown law.

11 **MS. DALEY:** I understood that part of your
12 testimony. I suppose that that agreement could have been
13 modified or varied if both parties agreed?

14 In other words, if Hall went back to the
15 Crown and said, "Listen, in these circumstances, it's
16 important for me not to await an opinion from the Crown and
17 I do want to make my own decision call here". That could
18 have been worked out?

19 **DEP. COMM. LEWIS:** Perhaps. I don't know
20 the circumstances at which the original agreement was
21 reached. Was it reached between our Commissioner and the
22 Deputy A.G.? I don't know, so ---

23 **MS. DALEY:** I take it that's not a matter
24 that Hall raised with you for any guidance or any input?

25 **DEP. COMM. LEWIS:** No.

1 **MS. DALEY:** All right. Now, let me just ask
2 you a few other questions as to whether Officer Hall raised
3 these concerns with you.

4 Did he raise any concerns with you
5 pertaining to Constable Dunlop and disclosure issues?

6 **DEP. COMM. LEWIS:** I was aware of disclosure
7 issues with Constable Dunlop, I just don't recall if it was
8 Pat Hall that told me. I don't ---

9 **MS. DALEY:** It could ---

10 **DEP. COMM. LEWIS:** And I don't remember if I
11 heard that then or I've heard it since either.

12 **MS. DALEY:** I recall yesterday, and I don't
13 need to dwell on it, but you also go a briefing at the
14 outset that involved Klancy Grasman, so, potentially, it
15 was he who told you about Dunlop?

16 **DEP. COMM. LEWIS:** It could -- it could have
17 been, yes.

18 **MS. DALEY:** Do you ever recall ever being
19 told by Officer Hall that he felt that the Crown involved
20 in one of these matters, that's Ms. Hallett who was the
21 prosecutor in Leduc, did he ever tell you he felt that she
22 had been untruthful with defence counsel?

23 **DEP. COMM. LEWIS:** No, I was not aware of
24 that.

25 **MS. DALEY:** Were you aware of -- I don't

1 want to use this term lightly -- but were you aware of the
2 derailment of the Leduc trial in February of '01?

3 **DEP. COMM. LEWIS:** I was aware that the
4 trial went from -- there was a re-election, and I don't
5 recall knowing then that there was a derailment.

6 **MS. DALEY:** All right. So as it was
7 unfolding, you don't recall knowing that those charges had
8 been stayed and that there had been a finding of wilful
9 non-disclosure? You didn't know about that?

10 **DEP. COMM. LEWIS:** No. In fact, I didn't
11 know that until preparing for this.

12 **MS. DALEY:** Fair enough. So I think the
13 answer to my next question follows.

14 I take it, sir, you didn't know at the time
15 that Mr. Hall had made a direct disclosure of a document to
16 defence without consulting the Crown; you didn't know that
17 that had occurred?

18 **DEP. COMM. LEWIS:** I didn't know that
19 until -- until recently.

20 **MS. DALEY:** All right.

21 **DEP. COMM. LEWIS:** Bearing in mind that at
22 the beginning of February, I was gone from the CIB position
23 in the region, so ---

24 **MS. DALEY:** Understood.

25 **DEP. COMM. LEWIS:** --- I had a new learning

1 curve ahead of me at that point.

2 MS. DALEY: Understood.

3 Let me just move to another topic, and that
4 is the desire to be able to finish Project Truth and to
5 state publicly that Project Truth was over.

6 I gathered from your testimony that from
7 Officer Hall's perspective, from a policing perspective,
8 Project Truth was over in the summer of 2000 when the final
9 briefs were submitted?

10 DEP. COMM. LEWIS: The investigation was
11 over, yes.

12 MS. DALEY: Yes. So your frame of mind
13 going into your new job in October was that essentially
14 this investigation is finished?

15 DEP. COMM. LEWIS: That's correct. I was
16 assured by Pat, who I had total faith in, that there was
17 nothing left to be done other than waiting for the
18 decisions from Crown Law ---

19 MS. DALEY: Right.

20 DEP. COMM. LEWIS: --- and then what could
21 come out of that if perhaps there was going to be a trial
22 in terms of witness prep, et cetera, would have obviously
23 continued the Truth team ---

24 MS. DALEY: Understood.

25 DEP. COMM. LEWIS: --- doing what they had

1 to do.

2 **MS. DALEY:** But barring the Crown coming
3 back on these briefs and saying, "Even though you have no
4 RPG, we think a change should be laid", barring that type
5 of circumstance, Project Truth was -- the investigative
6 stage was complete and all that remained was police
7 assistance in the prosecutions?

8 **DEP. COMM. LEWIS:** That is correct, unless
9 new witnesses or victims came forward.

10 **MS. DALEY:** All right.

11 So, sir, you said in your testimony
12 yesterday that there was -- these are my words but I think
13 it captures your thought -- that there was within the OPP a
14 desire to be able to say publicly that the investigation
15 was over. And that's something that was brought home to
16 you, I take it, and that's something that you gave thought
17 to in terms of a press release?

18 **DEP. COMM. LEWIS:** Without a doubt; that's
19 very true.

20 **MS. DALEY:** And I'm wondering if you can
21 help us with this.

22 Why was there such a desire to be able to
23 state publicly that this project was over?

24 **DEP. COMM. LEWIS:** Well, the desire really
25 was multiply focused, and that is we had a former judge and

1 a member of provincial parliament who conceivably would
2 have high credibility with the public in terms of what he
3 said publicly, saying negative things about the OPP and its
4 investigation in Project Truth.

5 The impacts that might have on the victims
6 that had really opened up their lives and personal tragedy
7 to us, as far as I was concerned, was very dangerous. They
8 could lose total faith in us and the judicial process, and
9 I didn't like that. It certainly wouldn't help further
10 victims to ever come forward if there were further victims
11 out there.

12 It sent a message to the public that the OPP
13 is inept and, ultimately, that could affect our business in
14 many other ways in terms of community safety and -- and the
15 perspective of safety in the communities by people in areas
16 that we policed.

17 And, as well, as I mentioned yesterday,
18 internally in the OPP we had a lot of officers that gave
19 years to this investigation, good, hard-working officers
20 and many others that watched that from a distance, that
21 heard our people being continually criticized in the media,
22 and that has a terrible effect on morale.

23 And so I really felt it was important that
24 we set the record straight for all of those reasons and,
25 ultimately, make sure the witnesses and victims have faith

1 in us and that the public has faith in us, and that our own
2 officers believe that we've done the right things and that
3 the public acknowledges that as opposed to this continual,
4 negative press from someone who really didn't know what
5 they were really saying, and had been fed misinformation of
6 some sort.

7 **THE COMMISSIONER:** I'm sorry, I might have
8 missed it. Did you also include the fact that people who
9 may be charged would like to have this dealt with fairly
10 quickly?

11 **DEP. COMM. LEWIS:** Oh, for sure, and I
12 mentioned that yesterday. In terms of the people that
13 ultimately had been interviewed and knew they were suspect,
14 whether or not they were actually guilty they may want this
15 dealt with in -- in a professional way with an organization
16 that is going to deal with them fairly. And any other
17 suspects out there that had yet to be investigated, they
18 needed to know that the OPP are out doing their job and
19 we're going to come and get them at some point if, in fact,
20 there's allegations made.

21 **MS. DALEY:** It strikes me that a lot of what
22 you said to us in that answer goes to being able to respond
23 to Mr. Guzzo, to correct his errors in the public record,
24 et cetera, et cetera, but not necessarily to being able to
25 finish Project Truth?

1 In other words, what I'm trying to
2 understand is -- I quite understand why you want to respond
3 to Mr. Guzzo -- why is it so important to be able to
4 publicly say, "Project Truth is completed"?

5 **DEP. COMM. LEWIS:** Well, I mentioned this
6 yesterday.

7 Of course, part of that strategy around
8 being able to say, "We have finished our piece of this",
9 was to really put some pressure on the Attorney General's
10 office to get these decisions made because we were getting
11 blamed for all of that.

12 We had done our work and our officers had,
13 and that had been submitted, so we were waiting for those
14 decisions. I realize there was a variety of reasons why
15 the decisions were slow-coming and I'm not being critical
16 at all but, ultimately, we're still waiting and there
17 didn't seem to be an impetus to get that done as quickly as
18 we wanted it done so we could -- we could move forward.

19 **MS. DALEY:** All right. So I guess -- let me
20 just ask a few questions in response to that. You did
21 mention a morale issue.

22 **DEP. COMM. LEWIS:** Yes.

23 **MS. DALEY:** Was the fact that Project Truth
24 was dragging on and attracting criticism to the Force,
25 causing morale issues within the Force?

1 **DEP. COMM. LEWIS:** Well, certainly, every
2 day the people in Eastern Ontario and elsewhere were
3 hearing the OPP continually slammed ---

4 **MS. DALEY:** Right.

5 **DEP. COMM. LEWIS:** --- as a result of what
6 Mr. Guzzo was saying. I don't know specifically that
7 anyone had a morale issue over that but I've been around
8 the organization a long time. It was bothering me and I
9 had nothing to do with Project Truth. I can only imagine
10 what the investigators felt and what others felt in the
11 area that knew that was so wrong.

12 **MS. DALEY:** So perhaps part of the reasoning
13 might be if we're able to tell the world we're finished,
14 we've done our job that perhaps the negative press might
15 stop.

16 **DEP. COMM. LEWIS:** Well, it might, yes. And
17 our officers are going out dealing with other situations
18 and investigations every day with victims and witnesses.
19 And ultimately, if they're dealing with people who think,
20 "Oh, yeah, you're from that organization that we've heard
21 Guzzo speak of," it doesn't give people confidence that
22 they're dealing with an organization that has credibility
23 and integrity.

24 **MS. DALEY:** Now, let me then deal with what
25 I'm going to call the external actors upon you, and you

1 testified in-chief about that as well. There was evidence
2 that Chief Repa of the Cornwall Police Service was anxious
3 for a conclusion, that the mayor, Mr. Sylvester, was
4 anxious for a conclusion as was Bishop LaRocque himself;
5 right?

6 **DEP. COMM. LEWIS:** That's correct. Now, and
7 that was not pressure as far as I was concerned, to be
8 honest. Those were just factors to show this needed to be
9 moved forward.

10 **MS. DALEY:** All right.

11 **DEP. COMM. LEWIS:** Chief Repa's call to me -
12 - and I totally appreciated where he was coming from --
13 that didn't make me feel any great need to get this solved.
14 It was just another indicator to me that this thing is
15 still hanging out there and it's affecting a lot of people.

16 **MS. DALEY:** To the Commissioner's point,
17 you recall the question he asked you, and I assume this
18 answer follows from what you've told me previously, but I
19 take it the fact that some of these individuals, either the
20 Bishop himself personally or the Cornwall Police Force were
21 still potential suspects, and in that context, making
22 public statements as they were, which is "Hey, let's end
23 this or let's get a conclusion" were those -- did you
24 connect those dots and have a concern about that?

25 **DEP. COMM. LEWIS:** Oh, for sure; yeah, for

1 sure. I mean, really, ultimately the organization -- any
2 policing organization has to look after the best interests
3 of victims, witnesses, and suspects who may or may not be
4 guilty.

5 And so we owe it to all those people to do a
6 proper job and we need to show them through our
7 professionalism and all we do that we are going to treat
8 them fairly. And if people have things hanging over their
9 heads that aren't dealt with and in some cases perhaps
10 they're not guilty, that's not fair to them either.

11 **MS. DALEY:** All right.

12 So it didn't -- it didn't create a nugget of
13 concern for you that some of the individuals who were
14 themselves still suspects were clamouring for an answer?
15 That didn't trouble you?

16 **DEP. COMM. LEWIS:** No, it was -- that was.
17 It specifically didn't jump out at me but it was a piece of
18 the bigger picture; victims, witnesses, the public and our
19 own officers needed to know that we were doing the right
20 things.

21 **MS. DALEY:** All right.

22 Now, in fact, did you know that Officer Hall
23 had told Repa and Sylvester about the delay in the receipt
24 of the Crown briefs? Did you know that he had that
25 conversation with him?

1 **DEP. COMM. LEWIS:** I don't recall
2 specifically knowing that. It was apparent from my
3 conversation with Chief Repa that he was aware that we were
4 awaiting legal decisions.

5 **MS. DALEY:** And in all likelihood Officer
6 Hall would have imparted that information?

7 **DEP. COMM. LEWIS:** I can only assume that.
8 I don't know for sure.

9 **MS. DALEY:** Did that concern you at all,
10 that that information -- let me put it this way. If there
11 is a conflict or discord between the OPP and the Crown over
12 this issue was it of any concern to you that Officer Hall
13 was in fact telling other parties that the Crown was
14 delaying matters?

15 **DEP. COMM. LEWIS:** I don't know that he was
16 doing that. I just knew that Chief Repa was aware of that.
17 I specifically spoke to it myself when I was talking to
18 Chief Repa.

19 **MS. DALEY:** Right.

20 **DEP. COMM. LEWIS:** And I wasn't concerned
21 about telling a police chief that that was an issue.

22 **MS. DALEY:** You didn't have concern about
23 sharing that with the Chief?

24 **DEP. COMM. LEWIS:** No, I didn't.

25 **MS. DALEY:** All right.

1 (SHORT PAUSE/COURTE PAUSE)

2 MS. DALEY: Sir, maybe I'll need to direct
3 you to an exhibit here but there is one aspect of the
4 interaction with Guzzo I just want to deal with.

5 And I take it, sir, in terms of the factual
6 part of that presentation, to the extent that facts were
7 being presented to rebut what Guzzo said, those facts came
8 from Officer Hall, obviously?

9 DEP. COMM. LEWIS: They did, yes.

10 MS. DALEY: One moment.

11 (SHORT PAUSE/COURTE PAUSE)

12 MS. DALEY: I don't know if you're going to
13 recollect this detail, sir, but do you recollect that one
14 of the allegations that Mr. Guzzo was making was that there
15 was materials that had been given to the Solicitor General,
16 to the Attorney General, et cetera, but that as of July of
17 1998 the OPP still didn't have them? Do you recall that
18 detail?

19 DEP. COMM. LEWIS: I don't recall discussing
20 that with Guzzo. I do recall that issue and that's why I
21 spoke to Chief Fréchette prior to meeting with Mr. Guzzo in
22 relation to there was some confusion around different
23 information that had been given of then-Chief Fantino and
24 to the AG and to the OPP and who had what and whether there
25 were boxes or binders, and that's really all I remember

1 about that.

2 **MS. DALEY:** Did Officer Hall ever tell you
3 that when he received material directly from Officer Dunlop
4 in the summer of 1998 that some of the binders of material
5 he received related to Officer Dunlop's police discipline
6 matter and contained interview reports of Cornwall Police?
7 Did Officer Hall ever give you that detail?

8 **DEP. COMM. LEWIS:** Not that I recall.

9 **MS. DALEY:** And what he told us here was
10 that from his perspective when he saw that additional --
11 that new material, he said in his mind it was potentially
12 relevant to the conspiracy investigation because of course
13 it contained statements of Dunlop's fellow officers. Did
14 he ever talk to you about that?

15 **DEP. COMM. LEWIS:** I don't recall if he did.
16 He may have but I don't remember that conversation.

17 **MS. DALEY:** All right.

18 He told us here that in fact even though the
19 primary investigative material that Dunlop gave at that
20 time was already known to the OPP, these two additional
21 briefs that related to the police discipline was not known
22 to the OPP and had a potential relevance to the conspiracy
23 brief. Does that ring any bell with you, sir?

24 **DEP. COMM. LEWIS:** I wasn't aware of that
25 and even now I wasn't aware of it until you said it.

1 **MS. DALEY:** If you want to just look briefly
2 with me at Exhibit 2902 and that is your -- the OPP
3 response to the facts portion of Mr. Guzzo's letter, just
4 to help you remember that.

5 **DEP. COMM. LEWIS:** I don't believe I have
6 that.

7 **THE COMMISSIONER:** Just a second.

8 **(SHORT PAUSE/COURTE PAUSE)**

9 **DEP. COMM. LEWIS:** Okay.

10 **MS. DALEY:** Sir, just to, I hope, help you
11 as to how this document works, it's my understanding --
12 starting on page 2 what has happened is that OPP have
13 extracted Mr. Guzzo's issues and reprinted them and then
14 put their response beneath that. That was how this
15 document was meant to operate?

16 **DEP. COMM. LEWIS:** Yes, I believe so.

17 **MS. DALEY:** All right. So if you look on
18 page numbered 3 at the top, Issue 2, that's the issue I'm
19 focusing on. And you see Mr. Guzzo says amongst other
20 things:

21 "Why would an experienced police
22 officer look over four boxes of
23 affidavits, statements and evidence and
24 sign a statement that he had never seen
25 this material prior thereto..."

1 And he goes on from there.

2 **DEP. COMM. LEWIS:** Yes, I recall this.

3 **MS. DALEY:** You recall that?

4 **DEP. COMM. LEWIS:** Yes.

5 **MS. DALEY:** And I don't know if you'll
6 recall this detail, sir, but there was in fact a receipt
7 that Pat Hall signed on that date indicating that some of
8 the materials had not been previously seen.

9 So this is what Mr. Guzzo was focusing on
10 and this is what you were trying to prepare a response to.
11 Correct?

12 **DEP. COMM. LEWIS:** That's correct, and I
13 recall that although Guzzo was mentioning four boxes Pat
14 Hall had told me that it was four binders. I recall that
15 there was four different pieces of material delivered to
16 different places ---

17 **MS. DALEY:** Yes.

18 **DEP. COMM. LEWIS:** --- including the Sol Gen
19 and the AG and Chief Fantino and that they differed; the
20 material was not necessarily the same in all four cases.

21 **MS. DALEY:** Looking at the response, was it
22 Mr. Hall who created that response?

23 **DEP. COMM. LEWIS:** I assumed so.

24 **MS. DALEY:** All right. It wasn't ---

25 **DEP. COMM. LEWIS:** It was him and his team,

1 ultimately.

2 **MS. DALEY:** I guess I should have asked this
3 question. It wasn't entirely clear to me from your
4 examination yesterday, but was this document provided to
5 Mr. Guzzo in the meeting or did it become ---

6 **DEP. COMM. LEWIS:** No, I don't believe we
7 provided him any documents. It was just us talking, and
8 Pat mostly in anything substantive because he knew the
9 facts, that "Mr. Guzzo, you have made this statement
10 publicly but here is the reality," and we walked through a
11 number of those things.

12 **MS. DALEY:** I have to assume, sir, that in
13 this exercise with Guzzo your intent was to be absolutely
14 honest and clear?

15 **DEP. COMM. LEWIS:** One hundred percent.

16 **MS. DALEY:** Given that Mr. Hall has told us
17 here that in fact he did get some material from Dunlop that
18 he had not previously obtained and that he did consider
19 relevant when I look at the response, I have a little bit
20 of difficulty thinking that it's a very -- a completely
21 fulsome response to Guzzo. Would you agree with that or
22 not?

23 **DEP. COMM. LEWIS:** I can't agree with that
24 because I'm not even sure what you're talking about. I
25 know that I had all the faith in the world in Pat ---

1 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner, I
2 don't believe that question was put to Mr. Hall so I'm not
3 certain how Ms. Daley can put the question to Mr. Lewis.

4 **THE COMMISSIONER:** Ms. Daley?

5 **MS. DALEY:** Well, it's not a perfect world
6 here and sometimes we find documents after a witness has
7 left the witness stand. You know, I can't take issue with
8 what my friend's saying. I'm not sure that this was
9 directly put to Mr. Hall by anybody ---

10 **THE COMMISSIONER:** M'hm.

11 **MS. DALEY:** --- but this gentleman now is
12 part of the response and he's told us his intention is
13 sitting down with Guzzo to -- and, you know, I don't think
14 it's a totally unfair question.

15 **THE COMMISSIONER:** So why don't we do it
16 this way; why don't you ask him "to your knowledge"?

17 **MS. DALEY:** Do you have any knowledge, sir,
18 that would suggest to you that perhaps this answer is less
19 than accurate?

20 **DEP. COMM. LEWIS:** None whatsoever.

21 **MS. DALEY:** All right.

22 **THE COMMISSIONER:** My only thought on it is
23 that the second paragraph it says:

24 "Investigators have confirmed that the
25 documentation they did obtain were the

1 same as the file sent to the Attorney
2 General's office."

3 And in the previous paragraph it says:

4 "The OPP has at no time received such
5 files from the Attorney General's
6 office."

7 So unless they -- so they weren't able to
8 compare the Attorney General's boxes or notes. So it's --
9 to the uneducated reader they might wonder well, I wonder
10 how he did that.

11 **DEP. COMM. LEWIS:** Certainly. And whether
12 they -- whoever supplied it claimed it was the same
13 material and they believed that, I have no idea.

14 **MR. KOZLOFF:** I appreciate what you're
15 saying, sir, it sort of calls for nothing but speculation
16 from this witness.

17 **THE COMMISSIONER:** M'hm.

18 **MR. KOZLOFF:** In fact, to respond to it, I
19 can only speculate that if Inspector Hall was saying that
20 it was because it was based on his understanding from what
21 Mr. Dunlop told him that he had delivered to the Ministry
22 of the Attorney General.

23 **THE COMMISSIONER:** I know that and you know
24 that.

25 **MR. KOZLOFF:** Yes.

1 **THE COMMISSIONER:** But for whoever was
2 reading this at the time or saying this it seems to be an
3 oxymoron.

4 **MR. KOZLOFF:** I can't respond to that.

5 **THE COMMISSIONER:** There you go.

6 **MS. DALEY:** Sir, do you recall this topic
7 being discussed with Mr. Guzzo when you were present or I
8 take it your recollection isn't that ---

9 **DEP. COMM. LEWIS:** No, it isn't that good.
10 Pat spoke to these issues once again because he knew them
11 well. I do recall there was some discussion around who got
12 what material but that's about as far as I can recall.

13 **MS. DALEY:** That's fine, sir.

14 Moving to another topic, what I wanted to
15 speak to you about now is the communications you had with
16 Mr. Segal's office prior to the start of the Leduc trial
17 and what you were told about Ms. Hallett.

18 **DEP. COMM. LEWIS:** Certainly.

19 **MS. DALEY:** And I take it, sir, Ms. Hallett
20 is both the prosecutor in the Leduc trial and the Crown
21 whose been assigned to give opinions on the outstanding
22 briefs. You understood that?

23 **DEP. COMM. LEWIS:** That was my
24 understanding.

25 **MS. DALEY:** And I think you agreed with us

1 yesterday that as of January 15th, which was a relevant date
2 for your purposes, the Leduc jury trial was commencing?

3 **DEP. COMM. LEWIS:** I was aware of that, yes.

4 **MS. DALEY:** All right.

5 And I take it, sir, would you accept that
6 the AG's priority at that time would legitimately be the
7 conduct of the jury trial as opposed to the Crown briefs,
8 given that the Crown briefs essentially put forward a
9 police view that there was no RPG?

10 **DEP. COMM. LEWIS:** Could you repeat that
11 please?

12 **MS. DALEY:** Yeah, it wasn't a good question.

13 Would you -- I take it what happened is that
14 in the communication you had with Mr. Segal, the message he
15 was giving you was we have to have -- Ms. Hallett has to
16 give priority to this trial?

17 **DEP. COMM. LEWIS:** I don't recall him saying
18 those words. I recall him saying that -- I don't remember.
19 I'd have to look at my notes specifically please.

20 **MS. DALEY:** Let me help you; Exhibit 2899.
21 These will be your notes of Jan 15, '01. So it's Bates
22 673.

23 **DEP. COMM. LEWIS:** Yes.

24 **MS. DALEY:** I guess my question, sir, is to
25 the extent that what he's telling you is that the jury

1 trial needs to be a priority at this point for Ms. Hallett,
2 did you accept that explanation? Did you think that was a
3 reasonable way to prioritize?

4 **DEP. COMM. LEWIS:** That wasn't what he said.
5 And really the discussion was around having someone review
6 these files. She was obviously starting a jury trial; we
7 wanted these files reviewed. He was reluctant, as I say
8 right in my notes, to pull these files away from her now
9 when she had a lot on her plate, under obviously -- I don't
10 remember his exact words. My sense in the conversation was
11 she was under stress. She was starting a trial ---

12 **MS. DALEY:** Right.

13 **DEP. COMM. LEWIS:** --- had all these things
14 on her plate, and God knows what else in her life as a
15 Crown attorney, and he was reluctant to pull that stuff
16 from her at that time.

17 **MS. DALEY:** All right.

18 **DEP. COMM. LEWIS:** And it wasn't -- he did
19 never say that the jury trial has to take precedent, it was
20 more concern around her and her workload and the ---

21 **MS. DALEY:** All right.

22 **DEP. COMM. LEWIS:** --- things she had on her
23 plate.

24 **MS. DALEY:** All right. Fair enough.

25 I take it, sir, that what he was not

1 communicating to you was that she was having some personal
2 emotional problems? He didn't say that to you?

3 **DEP. COMM. LEWIS:** No, he did not. He -- in
4 those words? I don't believe he used those words. That
5 would stick out in my mind. I don't recall the words he
6 used but I do recall leaving the conversation thinking this
7 woman has a lot on her plate right now, and ---

8 **MS. DALEY:** And which is understandable
9 given the circumstances, right?

10 **DEP. COMM. LEWIS:** Well, and I didn't know
11 what that was on her plate. I knew she had numerous briefs
12 before her.

13 **MS. DALEY:** Right.

14 **DEP. COMM. LEWIS:** I knew she had a jury
15 trial starting, and as a Crown attorney she may have other
16 -- five other trials starting. I didn't know and I didn't
17 ask.

18 **MS. DALEY:** I understand that. My only
19 point to you, and I think you will agree, that the
20 situation that Mr. Segal's telling you about is a
21 professional situation that Ms. Hallett has to deal with;
22 it's not a personal emotional problem that he's telling you
23 about?

24 **DEP. COMM. LEWIS:** That wasn't my sense, but
25 once again I don't remember exactly what he said.

1 **MS. DALEY:** All right.

2 And I take it you didn't give Mr. Hall the
3 impression that Ms. Hallett had some personal emotional
4 problems she's dealing with?

5 **DEP. COMM. LEWIS:** I don't know what
6 impression Mr. Hall got from what I did tell him. I
7 remember what my sense of the conversation was and I know -
8 - I don't recall specifically but I would have passed that
9 on to Pat I'm sure ---

10 **MS. DALEY:** Fair enough.

11 **DEP. COMM. LEWIS:** --- given that I just
12 talked to the Assistant Deputy Minister, but I don't
13 remember what exactly I heard or what exactly I told Pat
14 Hall. I just remember my sense of the conversation then
15 and now.

16 **MS. DALEY:** All right.

17 Which, to just sort of put a line under it,
18 is that it is professional stress on Ms. Hallett that's of
19 concern to Segal ---

20 **DEP. COMM. LEWIS:** That's ---

21 **MS. DALEY:** --- not something personal to
22 her?

23 **DEP. COMM. LEWIS:** I don't recall him
24 mentioning anything personal.

25 **MS. DALEY:** Okay. Thank you.

1 If I could just ask you to look briefly at
2 Exhibit 2911. It's probably in the book that you have.

3 **DEP. COMM. LEWIS:** Two nine one one (2911)?

4 **MS. DALEY:** Yes.

5 **DEP. COMM. LEWIS:** Yes.

6 **MS. DALEY:** This should be your email to Mr.
7 Crane and numerous others pertaining to the desire to make
8 a press release and the things that you would like to say,
9 just to refresh your mind about that.

10 **DEP. COMM. LEWIS:** That's right.

11 **MS. DALEY:** And obviously what you reflect
12 in this communication is, I would say, a fairly strong
13 desire to be able to make a press release at this time for
14 the reasons that you're stating here.

15 **DEP. COMM. LEWIS:** Pardon me? Could you
16 repeat that, please? Sorry.

17 **MS. DALEY:** Yes. Was your frame of mind at
18 this time that it was very desirable to be able to make a
19 press release now?

20 **DEP. COMM. LEWIS:** Oh, very much so, yes.

21 **MS. DALEY:** All right.

22 And, amongst other things, what you are
23 intending to announce -- if you look halfway down the page
24 you have a number of bullets there and those are your
25 intended announcements, sir?

1 **DEP. COMM. LEWIS:** That's correct.

2 **MS. DALEY:** And the second one is that
3 although some victims knew each other some accused knew
4 each other and one victim was assaulted by more than one
5 accused at different times, there was no evidence uncovered
6 to support the allegation of an organized ring?

7 **DEP. COMM. LEWIS:** That's correct.

8 **MS. DALEY:** So that was obviously a
9 statement that you and your seniors, in fact, considered
10 appropriate to be making at this time?

11 **DEP. COMM. LEWIS:** That's correct.

12 **MS. DALEY:** And you did tell me obviously
13 you didn't understand that Mr. Hall had the view that there
14 had to be at least two, if not more, convicted pedophiles
15 or sexual abusers before such an investigation could take
16 place?

17 **DEP. COMM. LEWIS:** I don't recall Pat ever
18 saying that to me.

19 **MS. DALEY:** All right.

20 **DEP. COMM. LEWIS:** But what this statement
21 says is there was no evidence uncovered. It doesn't speak
22 to whether or not anyone was convicted. It was just
23 whether or not there was evidence uncovered to support the
24 allegation.

25 **MS. DALEY:** I understand that. Mr. Hall's

1 view was though you wouldn't begin seeking such evidence.
2 In other words, there's not a basis to investigate until
3 you have some convictions. But that's not something that
4 he shared with you?

5 **DEP. COMM. LEWIS:** Not that I recall, no.

6 **THE COMMISSIONER:** Ms. Daley?

7 Mr. Carroll?

8 **MR. CARROLL:** Excuse me.

9 My recollection of Mr. Hall's evidence was,
10 in his view, you would need two or more convictions of
11 persons of sexual assault, acting in concert, before it
12 could be publicly declared to be a ring or a clan without
13 facing a lawsuit. I distinctly recall him saying that; not
14 before an investigation could be commenced because it's
15 self-evident you wouldn't need an investigation if you
16 already had convictions.

17 **THE COMMISSIONER:** No, no.

18 If he had convictions, it would open the
19 door to a conspiracy.

20 **MR. CARROLL:** It would open the door to him
21 -- his evidence was, sir, as I recall it, it would open the
22 door to him publicly declaring that there was a ring, and
23 that absent two or more convictions he could not publicly
24 say there was a ring. That's the context in which he made
25 that, not that there wouldn't be an investigation.

1 **THE COMMISSIONER:** Oh.

2 **MR. CARROLL:** There wouldn't be a need for
3 an investigation if he had convictions. There'd be perhaps
4 a need for a statement or a declaration of something,
5 either is a ring or a clan, but certainly not a further
6 investigation. As regards my views on it, that's my
7 recollection of his evidence.

8 **THE COMMISSIONER:** M'hm.

9 **MS. DALEY:** I have a different one but we
10 have a transcript and it's not a question that this
11 gentleman can help us with in any event.

12 **THE COMMISSIONER:** All right.

13 **MS. DALEY:** One thing we can say for sure,
14 sir, I think you'll acknowledge, that as of the early
15 months of '01 there had been no convictions on any of the
16 sex abuse charges laid. Did you know that, sir?

17 **DEP. COMM. LEWIS:** I don't -- I likely did.
18 I just don't recall knowing that at this point-in-time.

19 **MS. DALEY:** All right. We know, for
20 example, that at this very point-in-time the Leduc trial is
21 just commencing, so obviously that hasn't resulted in a
22 conviction.

23 **DEP. COMM. LEWIS:** Well, I know, as I said
24 in this email, that there is 15 people charged with 115
25 offences. I don't recall knowing the standing of those in

1 terms of ---

2 MS. DALEY: All right.

3 DEP. COMM. LEWIS: --- whether there had
4 been pleas or convictions or ongoing trials.

5 MS. DALEY: That's fine. Let me ask you
6 this question, sir.

7 To your knowledge, was Project Truth ever
8 criticized, in the media or otherwise, for not procuring
9 more convictions? Was that ever an element of criticism
10 that you heard?

11 DEP. COMM. LEWIS: I don't recall. It
12 doesn't stand out in my mind anyway.

13 MS. DALEY: All right.

14 Sir, did you know that public statements had
15 been made prior to this point-in-time by Tim Smith to the
16 effect that there was no evidence of any clan? Did you
17 know that that was already a message that the OPP had made
18 publicly?

19 MR. KOZLOFF: That's a little ingenuous,
20 sir, to say that somebody who's a retired police officer
21 speaks for the OPP. I think retired Detective Inspector
22 Smith made it very clear that when he spoke to the reporter
23 in question ---

24 THE COMMISSIONER: M'hm.

25 MR. KOZLOFF: --- he was doing so as a

1 retired police officer and was free to say some things that
2 perhaps he wouldn't have said in other circumstances.

3 **THE COMMISSIONER:** I think that's when he
4 came back to Cornwall after he had retired, yeah. No, I
5 think it was pretty clear he said he was speaking as a
6 retired officer.

7 **MS. DALEY:** All right. That's fine. It's
8 Exhibit 2524 if you need to look at it, sir.

9 There was a media piece in April of 1999. I
10 don't know if you have 2524 in that book.

11 **THE COMMISSIONER:** We'll get it to you or we
12 can put it on -- it's ---

13 **MS. DALEY:** Let's put it on the screen.

14 **THE COMMISSIONER:** Put it on the screen.

15 **MS. DALEY:** It's very easy to see on the
16 screen. And we'll be looking for Bates page 313.

17 I'm just wondering if you knew about this
18 media piece, sir. On Bates 313 I'm looking at the third-
19 and second-last paragraphs, the ones that start, "After
20 investigating the case".

21 **DEP. COMM. LEWIS:** I've never read this
22 article before.

23 **MS. DALEY:** All right. Did you have an
24 awareness that Tim Smith had made those statements?

25 **DEP. COMM. LEWIS:** None whatsoever.

1 **MS. DALEY:** All right.

2 Let me move to a different subject, sir.

3 I'm assuming the answer to this is "no" but I need to ask
4 the question.

5 In the time that you were involved in
6 Project Truth, did you develop any concerns about
7 Mr. Hall's ability to work effectively with the Crown,
8 Ms. Hallett?

9 **DEP. COMM. LEWIS:** I had no concerns about
10 anything Pat Hall did in terms of his abilities as
11 inspector. I know he was concerned about the length of
12 time it was taking but I don't recall him ever saying
13 anything negative or getting any perception that there was
14 negative feelings there.

15 **MS. DALEY:** Would you agree that he was
16 fairly incensed about the non-completion of the Crown
17 opinions by Ms. Hallett?

18 **DEP. COMM. LEWIS:** I wouldn't use the word
19 "incensed".

20 **MS. DALEY:** How would you describe his ---

21 **DEP. COMM. LEWIS:** He's very passionate
22 about it and the need ---

23 **MS. DALEY:** Yes.

24 **DEP. COMM. LEWIS:** --- and the need to get
25 it done, and he could name the dates that things would have

1 been turned over, but I would never describe it as incensed
2 or angry, just maybe a bit frustrated.

3 **MS. DALEY:** All right.

4 **DEP. COMM. LEWIS:** More so passionate about
5 moving things forward.

6 **MS. DALEY:** Certainly that her failure to
7 complete the briefs was a theme of his conversations with
8 you. It's something that he involved you in, right?

9 **DEP. COMM. LEWIS:** Oh, for sure.

10 **MS. DALEY:** Could you look very briefly at
11 Exhibit 2910, please?

12 **THE COMMISSIONER:** And what is that?

13 **MS. DALEY:** Two-nine-one-zero (2910).

14 **THE COMMISSIONER:** No, I know. Okay, it's
15 in here. Fine.

16 **MS. DALEY:** It should be in your book, sir.

17 **DEP. COMM. LEWIS:** Yes, I have it.

18 **MS. DALEY:** And I'm just -- I'm going to ask
19 you some questions about the email that Pat Hall sent to
20 you on Jan 14; that's the bottom one.

21 And am I right that Susan Kyle -- did she
22 work with Mr. Segal?

23 **DEP. COMM. LEWIS:** That's my understanding.

24 **MS. DALEY:** All right. And as I look at his
25 email to you, what he's essentially telling is that he has

1 reported to Susan Kyle that, as far as he's concerned,
2 Ms. Hallett has been deficient and she hasn't provided the
3 opinions and that the AG's Office is holding things up. Do
4 you see that, sir?

5 **DEP. COMM. LEWIS:** Am I missing the word
6 "deficient" in there? Was that ---

7 **MS. DALEY:** No.

8 **DEP. COMM. LEWIS:** Okay.

9 **MS. DALEY:** That was my word. I'm
10 paraphrasing. But he does say that -- he's
11 saying to Ms. Kyle that the AG's Office is our
12 problem here and it's Ms. Hallett's lack of
13 response.

14 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner, if
15 you're going to put a question to a witness with
16 respect to a particular document and you actually
17 have the words that the individual stated in the
18 email, you know, it seems from my perspective, I
19 would submit that it's appropriate to put those
20 words to the witness, not to paraphrase them.
21 It's not our job to paraphrase as counsel, in my
22 view. That would be my submission.

23 **MS. DALEY:** In any event, sir ---

24 **THE COMMISSIONER:** Whoa, whoa whoa. What do
25 you want to say about that?

1 **MS. DALEY:** Well, I don't need to
2 paraphrase. It's -- I will not paraphrase if that's going
3 to be offensive to people.

4 Essentially, what Hall is communicating is
5 he had -- he says:

6 "I told her tactfully that the AG's
7 office was holding up our response to
8 conclude Truth. I told her we needed
9 Hallett's legal opinion to make a final
10 decision..."

11 -- et cetera, right?

12 **DEP. COMM. LEWIS:** Yes.

13 **MS. DALEY:** And then he goes on to say:

14 "Hallett may not be pleased with my
15 response."

16 Do you see that?

17 **DEP. COMM. LEWIS:** Yes.

18 **MR. KOZLOFF:** I'm sorry, I don't like to
19 interrupt my friend.

20 This is in direct response to the questions
21 put by Ms. Kyle to Detective Inspector Hall, and without
22 including that in the question, the suggestion is that it's
23 a gratuitous shot by Detective Inspector Hall, rather than
24 a response to the very questions being put by Ms. Kyle.
25 She wanted an explanation. She wanted the details. "Is

1 your investigation complete?" "Yes, except for the fact
2 that we don't have the opinions from Crown Law office."

3 So to suggest -- to put questions without
4 putting the context of the question, in my respectful
5 submission, is unfair.

6 **THE COMMISSIONER:** Thank you. Ms. Daley?

7 **MS. DALEY:** I'm not trying to suggest
8 anything.

9 **THE COMMISSIONER:** I know.

10 **MS. DALEY:** I'm just trying to understand
11 how you responded to learning about this communication,
12 sir.

13 **THE COMMISSIONER:** Okay, go ahead.

14 **MS. DALEY:** Obviously, in response to
15 questions or otherwise, Mr. Hall has communicated this to
16 someone in Murray Segal's office; correct?

17 **DEP. COMM. LEWIS:** That's correct.

18 **MS. DALEY:** In his re. line to you is
19 "Inquiry from Murray Segal" or that's what -- that's who is
20 receiving this information from him; correct?

21 **DEP. COMM. LEWIS:** That's right.

22 **MS. DALEY:** And he is reflecting to you that
23 Mr. Hall may not be pleased with what's occurred?

24 **DEP. COMM. LEWIS:** He said those words, yes.

25 **MS. DALEY:** So has he essentially gone over

1 her head? Whether it be in response to a query or
2 otherwise, he's communicated something essentially to her
3 boss.

4 **DEP. COMM. LEWIS:** Well, it's totally my
5 assessment of it, is that he didn't go over her head.
6 Someone from Murray Segal's office called him.

7 **MS. DALEY:** Right.

8 **DEP. COMM. LEWIS:** And he answered
9 questions. I have no concern about his professionalism in
10 there. I don't see him really taking a shot, as you said
11 earlier, he's just stating a fact and he knows that by
12 stating that fact -- this is the way I read it -- that Ms.
13 Hallett may not be pleased with that. But I didn't view it
14 as anything that concerned me at all.

15 **MS. DALEY:** All right. So in this
16 connection, sir, was there anything that he disclosed to
17 you that made you think that perhaps his relationship with
18 Ms. Hallett might not be terrific and some work should be
19 done there?

20 **DEP. COMM. LEWIS:** No, I wasn't concerned
21 about it at all.

22 **MS. DALEY:** All right.

23 **DEP. COMM. LEWIS:** He just stated a fact.
24 He's still waiting for the stuff, and he's not saying that
25 coming to any opinion as to why she doesn't have the stuff.

1 He's just stating he doesn't have it yet.

2 **MS. DALEY:** All right.

3 A final area is a very, very brief question
4 or two about Guzzo and a criticism that he was bringing.

5 If I boil it down, really boil it down, in
6 part was what Mr. Guzzo said this -- that the OPP was
7 involved in looking at potential charges in this community
8 in 1994. None were laid. OPP comes back and Project Truth
9 lays 115 charges; we've seen that statistic.

10 And Mr. Guzzo says, "Hey, that's alarming",
11 because that implies perhaps that the first exercise was
12 inadequate, perhaps the second one is too.

13 Was that one of his core messages that you
14 folks were concerned about?

15 **DEP. COMM. LEWIS:** That was one of his
16 messages, yes.

17 **MS. DALEY:** Okay. Now, in terms of that
18 message, I take it that there was a rational explanation
19 for why that circumstance existed?

20 **DEP. COMM. LEWIS:** I don't recall it now off
21 the top of my head as in terms of what was the '94
22 investigation involving who; what was the later Project
23 Truth investigation involving who; what it the same people
24 suddenly reinvestigated and charges were laid?

25 **MS. DALEY:** Right.

1 DEP. COMM. LEWIS: I don't recall.

2 MS. DALEY: You don't know that detail?

3 DEP. COMM. LEWIS: No, I don't. I can't
4 remember it off the top of my head.

5 MS. DALEY: All right. But the parties who
6 did know those details, sir, you would expect to be in a
7 position to say, "Well, I know that that's how things seem
8 but here's a reasonable explanation for why that situation
9 should exist"?

10 DEP. COMM. LEWIS: Certainly somebody in
11 Tim's team would understand that, yes.

12 MS. DALEY: All right.

13 I guess I'm just wondering whether in the
14 response to Mr. Guzzo, in the messages that the OPP wanted
15 to put forward to correct the record, whether any thought
16 was given to explain to the community why that was the
17 case?

18 DEP. COMM. LEWIS: There may have been
19 thought and discussion at the time, I just don't recall it.
20 I'm going by what's in the documents now.

21 MS. DALEY: All right.

22 DEP. COMM. LEWIS: And I don't have any
23 memory of some of those other details.

24 MS. DALEY: All right.

25 I'd like you to help us because you said

1 yesterday that the new OPP, the OPP as it exists today, has
2 quite a different approach to addressing media matters,
3 right?

4 **DEP. COMM. LEWIS:** It does, yes, and that
5 was well underway even in 2001.

6 **MS. DALEY:** All right.

7 **DEP. COMM. LEWIS:** When I was a regional
8 commander here.

9 **MS. DALEY:** I'm just wondering whether if we
10 were faced with a situation like this in which there is a
11 vocal critic, there are, as a result of media attention,
12 lots of folks who are inclined to believe what Guzzo says
13 regardless of your efforts to correct the record, whether
14 in today's world with the OPP, what the media approach
15 might be.

16 And what I'm interested in is thoughts of
17 this sort. Would a public forum for example be something
18 that could be considered so that you come to the community
19 and you say, regardless of this criticism here's why
20 charges weren't laid previously and charges are laid now.
21 Like explaining to people face-to-face why that happened?

22 **DEP. COMM. LEWIS:** That kind of town hall
23 concept is alive and well and we've had those discussions
24 in the OPP in recent years regarding misinformation and
25 some issues that we've dealt with in other communities, and

1 we've discussed the ins and outs of having a town hall
2 meeting to get all those things out on the table.

3 So that is something we do consider. We
4 didn't discuss that back then that I can recall.

5 **MS. DALEY:** Do you think it would have been
6 feasible to do that back then?

7 **DEP. COMM. LEWIS:** Well ---

8 **MS. DALEY:** If it had been thought of?

9 **DEP. COMM. LEWIS:** Feasible, yes, but
10 bearing in mind that we still had a judge and jury trial
11 coming up. And during my involvement in January of '01, my
12 fear still was, as I had mentioned yesterday, dealing with
13 the press and saying anything that might jeopardize that
14 course of justice and the judicial process.

15 So we had to be careful how we -- what we
16 said. I was to the point where we were going to say
17 somethingm but we'd certainly have to couch it in a way
18 that didn't affect that trial.

19 And when you get into a public forum, you
20 never know what's going to come out and it's tough -- it's
21 easier to control if you put out something than it is if
22 you have a public forum.

23 **MS. DALEY:** I understand that.

24 **DEP. COMM. LEWIS:** And people start yelling
25 things out.

1 **MS. DALEY:** Right.

2 **DEP. COMM. LEWIS:** So that might not have
3 been a good approach.

4 We didn't consider it, but if I was to
5 reconsider that option now in those same circumstances, we
6 probably would not have done it.

7 **MS. DALEY:** Isn't part of the problem that
8 the OPP experienced that its public statements just --
9 people weren't buying it?

10 **DEP. COMM. LEWIS:** Well, that's always an
11 issue in dealing with the media. I mean, something gets
12 out there and then no one wants to read the contrary
13 version.

14 **MS. DALEY:** Right.

15 **DEP. COMM. LEWIS:** We deal with that daily.

16 **MS. DALEY:** Would it have been possible, for
17 example, to do an education or an explanatory type of a
18 program whereby, without referring to any particular
19 charges, you could explain to the public what the nature of
20 these charges were, what the nature of conspiracy was, and
21 why no charges were appropriate in the Cornwall situation
22 on the conspiracy front, for example?

23 **DEP. COMM. LEWIS:** Well, at that point, we
24 didn't -- still didn't have a decision back from Crown Law
25 as to that conspiracy.

1 **MS. DALEY:** Right. You ---

2 **DEP. COMM. LEWIS:** So that's not something
3 we would ever have gotten into a discussion around.

4 **MS. DALEY:** No, I know on your watch that
5 didn't happen. We know that by August of '01 that has
6 happened but that's no longer -- you're no longer engaged
7 with Project Truth at that point, right?

8 **DEP. COMM. LEWIS:** That's right.

9 **MS. DALEY:** Okay.

10 Does the OPP ever do things of that nature?
11 In other words, explain to the public what certain criminal
12 charges are about and why no charges are appropriate?

13 **DEP. COMM. LEWIS:** I can't think of an
14 example off the top of my head. Once charges are laid then
15 of course it's before the courts and we're not going to get
16 into trying it in the media. That goes without saying.

17 When charges aren't laid, what's the
18 explanation for charges not being laid, you know? You
19 certainly do get into potential victim issues and maybe --
20 that's something I would really have to think out and look
21 at each case specifically and look at the pros and cons of
22 doing that and weigh out the potential impacts of this
23 before making a decision. So it's tough to generalize.

24 **MS. DALEY:** Fair enough, but do you think
25 there's possibly a means of communicating that information

1 without, for example, identifying victims or former accused
2 or anything of that -- having a general information
3 session?

4 **DEP. COMM. LEWIS:** That is possible, yes.

5 **THE COMMISSIONER:** And perhaps in a general
6 information session, not dealing with the specific cases
7 but, I don't know, for example, correct certain facts that
8 are out there that are blatantly incorrect and easily
9 provable. For example, one of your officers is first
10 cousin to Father Charles MacDonald.

11 **MS. DALEY:** Good example.

12 **THE COMMISSIONER:** All right?

13 **MS. DALEY:** Yeah.

14 **THE COMMISSIONER:** And say, ladies and
15 gentlemen, let's get one thing straight, all right? I have
16 proof here from the birth records that this gentleman is
17 not related to that one. Now, let's stop that, all right?

18 **DEP. COMM. LEWIS:** M'hm.

19 **THE COMMISSIONER:** That maybe -- you know,
20 and then we're going a little further maybe, that Murray
21 MacDonald turned his father in or assisted the police or
22 ensured that he was not involved with the investigation and
23 immediately turned it over to somebody else so that he
24 would not be involved at all, as opposed to his father's a
25 paedophile and so he's got that -- you know, like those are

1 kinds of things that regardless of the charges, how would
2 that have worked?

3 **DEP. COMM. LEWIS:** Well, in this -- in part,
4 I guess, this was part of my thought around having a press
5 conference, was to say, as we did with Mr. Guzzo ---

6 **THE COMMISSIONER:** M'hm.

7 **DEP. COMM. LEWIS:** --- here's some things,
8 and it would have to be very carefully thought out and
9 really weighed in terms of the benefits versus the
10 potential consequences, Mr. Guzzo said X, the reality is Y.

11 **THE COMMISSIONER:** M'hm.

12 **DEP. COMM. LEWIS:** And, of course, in a live
13 press conference now you're into people yelling out
14 questions and thoughts that you may or may not want to
15 respond to and sometimes by not responding, you're almost
16 sending a negative message. So I know there's -- there's
17 always that debate whether to do it in the public forum but
18 certainly my goal was to point out to the public that what
19 Mr. Guzzo was saying was inaccurate at a press
20 conference ---

21 **THE COMMISSIONER:** M'hm.

22 **DEP. COMM. LEWIS:** --- by saying, just like
23 you say, Mr. Commissioner, that "This was said. This is
24 the reality..."

25 **THE COMMISSIONER:** M'hm.

1 **DEP. COMM. LEWIS:** "... about different
2 things."

3 **THE COMMISSIONER:** M'hm.

4 **MS. DALEY:** Did you perceive at all,
5 sir -- and this is my way of saying it -- you feel free to
6 disagree, but I think Project Truth generally, in my mind,
7 falls into two big pieces.

8 One of those pieces is the investigation of
9 current and historic sexual assaults that's brought
10 forward, and that is straightforward policing, right?

11 The other part of it though, the part that
12 we spoke about at the beginning, the conspiracy part, the
13 paedophile clan part, did you perceive that that part of
14 Project Truth was aimed at restoring the confidence of this
15 community in its own policing and other law enforcement
16 institutions?

17 **DEP. COMM. LEWIS:** Well, if there --
18 certainly if there was, in fact, a conspiracy in relation
19 to, as you mentioned earlier Cornwall Police and et cetera,
20 then that -- by dealing with that and proving it either
21 happened and dealing with it properly or proving it didn't
22 happen and communicating that, would be important to the
23 public.

24 **MS. DALEY:** Absolutely, so ---

25 **DEP. COMM. LEWIS:** If it happened, it's

1 being dealt with. If it didn't happen, we're confident it
2 didn't happen; it was properly investigated. So that -- I
3 mean, that's a big part of what we do in any ---

4 **MS. DALEY:** Precisely.

5 **DEP. COMM. LEWIS:** --- allegation publicly.

6 **MS. DALEY:** Precisely. And because of the
7 very concerning nature of those allegations, I take it you
8 appreciated the community was very anxious to know whether
9 anyone is conspiring or they're not, and have their faith
10 either restored in the status quo or have a new status quo
11 brought in?

12 **DEP. COMM. LEWIS:** That would be a piece of
13 it, yes.

14 **MS. DALEY:** All right.

15 **DEP. COMM. LEWIS:** That was still
16 outstanding when I left the Criminal Investigation Branch,
17 so that -- that brief still had not been dealt with by the
18 A.G.'s office.

19 **MS. DALEY:** Understood. One final question
20 in terms of the public perception and that problems that
21 that caused you, and that's the website.

22 You were aware that there was a website
23 called projecttruth.com and then projecttruth2.com, in
24 which material pertaining to a paedophile clan and victims'
25 statements et cetera, were posted?

1 **DEP. COMM. LEWIS:** I was aware of that, yes.

2 **MS. DALEY:** All right. And that's part of
3 the problems that you were experiencing?

4 **DEP. COMM. LEWIS:** Well, it was certainly
5 part of the misperceptions that were out and alive and well
6 in the community.

7 **MS. DALEY:** Would the OPP ever consider in
8 a -- if a similar situation were to arise again, which
9 let's hope it doesn't but if it did, would the OPP consider
10 its own website responding to the one that was alarming the
11 community?

12 **DEP. COMM. LEWIS:** Well, in a general sense
13 we've considered that recently in some other events, some
14 of the aboriginal events we face in the province. There's
15 been blogs alleging things that are just unbelievable ---

16 **MS. DALEY:** Right.

17 **DEP. COMM. LEWIS:** --- that didn't occur.
18 And so trying to mitigate that and the concern that caused
19 in the community has been something we've been looking at
20 and trying to deal with.

21 But, it -- it can become a never-ending
22 thing too. In the case of what was going on and what was
23 being said at the time in the web sites you referred to,
24 some of that stuff was still either before the courts or
25 was in Crown briefs that we were waiting for a decision on

1 as to whether they were going to court.

2 So, ultimately, we just couldn't get into
3 discussing kind of those finite details.

4 **MS. DALEY:** I understand that.

5 Not until August of '01 when it's all
6 finally wrapped up and over, and by that time I know that
7 you're not on the brief anymore ---

8 **DEP. COMM. LEWIS:** I was not.

9 **MS. DALEY:** --- but would it have -- back in
10 '01, would there have been any thought given to whoever's
11 responsibility it was to perhaps try to counteract the
12 website when it's all over, by putting information of their
13 own out?

14 **DEP. COMM. LEWIS:** It may have been
15 considered and weighed as to the pros and cons. I'm not
16 aware of that.

17 **MS. DALEY:** Okay. Those are my questions.
18 Thank you.

19 **THE COMMISSIONER:** Thank you.

20 Mr. Horn?

21 --- CROSS EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

22 **MR. HORN:**

23 **MR HORN:** Good morning.

24 **THE COMMISSIONER:** Good morning, sir.

25 **MR. HORN:** Yes, Frank Horn, Coalition for

1 Action.

2 I don't have too many questions, just a few.
3 I thought maybe we'd try to bring to light certain issues.

4 One of the things that came to mind was
5 the -- in that meeting with Mr. Guzzo at his office, there
6 was an email from yourself to Pat Hall in which you wanted
7 to avoid scrums at Queen's Park? Do you remember that?

8 **DEP. COMM. LEWIS:** I vaguely remember. Is
9 there something I could look at to ---

10 **MR. HORN:** Yes, it would be 701030. I don't
11 know if there's an exhibit number. There isn't.

12 **THE COMMISSIONER:** All right, so it's a new
13 document.

14 **MS. SACCOCCIO BRANNAN:** Mr. Commissioner,
15 this is a Rule 38 notice by CCR, so that's where you will
16 find it, Madam Registrar.

17 **THE COMMISSIONER:** Thank you.

18 Exhibit 2917 is email correspondence and
19 exchanges from Chris Lewis to Patrick Hall, dated Tuesday,
20 November 21st, in the year 2000.

21 --- **EXHIBIT NO./PIÈCE NO. P-2917:**

22 (701030) - Email correspondence from Chris
23 Lewis to Pat Hall re: Project Truth - dated
24 November 21, 2000

25 **DEP. COMM. LEWIS:** Yes, sir, I have that

1 now.

2 **MR. HORN:** Do you have that?

3 **DEP. COMM. LEWIS:** Yes.

4 **MR. HORN:** Do you recall the rationale
5 behind making the decision of avoiding publicity when
6 you're going to go and meet with Mr. Guzzo?

7 **DEP. COMM. LEWIS:** It wasn't that we were
8 avoiding publicity that this email says. I didn't
9 want -- I'm going to go into a media meeting of some sort
10 and we're obviously gearing up for that. I want that to be
11 under my control, not Mr. Guzzo's. I didn't want this to
12 turn into a media event. I wanted it to be a meeting
13 between us and Mr. Guzzo to explain to him the things he
14 was being fed and saying publicly were inaccurate.

15 My concern was, and my rationale for saying
16 what I said here is, that this -- I was seeing -- I was
17 afraid this would turn out to be just all about Mr. Guzzo
18 as opposed to us dealing with the facts and the issues here
19 because everything I had seen and read from him, at that
20 point, made me fear that this would become another thing
21 just about Mr. Guzzo and I didn't want that.

22 **MR. HORN:** But isn't there a problem when
23 you're doing something like that, when what you're really
24 doing is -- this is the police going to a Member of the
25 Legislature, secretly, in order to have a secret meeting,

1 in order to tell him what the OPP's version of the truth
2 is, and you want him to now know what you think the truth
3 is because you don't agree with his version of the truth?

4 **DEP. COMM. LEWIS:** Yes, secret wasn't the
5 case. I mean, we announced to the Sergeant-At-Arms of the
6 legislature that we were going to be there, so there was no
7 secret.

8 It was going to be a private meeting between
9 us and Mr. Guzzo. He asked if Mr. Coburn could sit in and
10 we didn't have any problem with that, but that was it. We
11 didn't want the news there with cameras and -- when we were
12 having this discussion.

13 **MR. HORN:** I understand that, but what we're
14 -- I'm suggesting is, that this is police going to a Member
15 of the Legislature, who is a maverick, who is pushing
16 through legislation through the legislature, and suddenly
17 you're going to secretly have a meeting with him in order
18 to tell him what your version of the truth is going to be.

19 **DEP. COMM. LEWIS:** Once again, the word
20 "secret" ---

21 **MR. HORN:** Pardon?

22 **DEP. COMM. LEWIS:** The word "secret" was not
23 in my mind.

24 You are right, we were going to speak to a
25 Member of the Legislature in his office in private, to tell

1 us -- to tell him what we believed to be the truth versus
2 the misinformation that he was portraying in the media.

3 **MR. HORN:** Okay, so what is it you were
4 trying to do? You were trying to get him to start mouthing
5 the OPP version of the truth?

6 **DEP. COMM. LEWIS:** Actually, we wanted him
7 to not mouth any version of anything any more; we just
8 wanted to let it run its course.

9 So there was two -- it was two-fold really,
10 to let him know that he'd been fed misinformation and the
11 second part of that was to hopefully convince him that
12 through pointing out the misinformation he was giving to
13 the public, that he shouldn't do that any more, but we
14 never, ever said those words.

15 But that was ultimately my goal, "You've
16 been fed misinformation, sir. You're misinforming the
17 public", and the underlying, quiet message to that, unsaid,
18 was "Please don't do this any more".

19 **MR. HORN:** I understand. A member of the
20 legislature, who's a representative of the people, he's
21 elected to represent the people -- here is a police
22 department sending somebody in there in order to quiet him
23 down and no longer agitate for a public inquiry? Doesn't
24 that sound a little bit scary?

25 **DEP. COMM. LEWIS:** Well, I -- I totally

1 disagree with what you just said.

2 We actually said to him at the time that we
3 welcomed a public inquiry. At that point-in-time we hoped
4 for a public inquiry so the truth would come out.

5 So that was -- there was no intent to get
6 him to stop any quest that way, it was just for him to stop
7 giving misinformation to the public that was confusing
8 victims and witnesses and the general public, et cetera.
9 It had nothing to do with stopping an inquiry.

10 **MR. HORN:** Okay. What I'm suggesting to you
11 is that there was a -- how many people were in that room
12 with you when you went to see ---

13 **DEP. COMM. LEWIS:** Pat Hall, myself,
14 Mr. Guzzo and Brian Coburn.

15 **MR. HORN:** And how many of you were dressed
16 in uniform?

17 **DEP. COMM. LEWIS:** None.

18 **MR. HORN:** So you made sure nobody knew that
19 there was police officers going to a Member of the
20 Legislature secretly in order to meet with him?

21 **DEP. COMM. LEWIS:** We told the Speaker of
22 the House we were coming, so I ---

23 **MR. HORN:** What ---

24 **DEP. COMM. LEWIS:** We told the Speaker of
25 the House we were coming so I don't think it was some

1 clandestine manoeuvre, if that's what you're suggesting.

2 MR. HORN: So it wasn't for the purposes of
3 intimidating him then?

4 DEP. COMM. LEWIS: Not in the slightest.
5 The man was a Member of Parliament and a former judge. We
6 weren't there to try and intimidate him at all. We treated
7 him with the greatest respect.

8 MR. HORN: Thank you.

9 Now, the other area that I'm interested in
10 is the investigation that went on. Not only was Constable
11 Hall investigated but you were also investigated in regards
12 to the ---

13 DEP. COMM. LEWIS: I'm not sure who
14 Constable Hall is.

15 MR. HORN: When he was investigated by the
16 Professional Standards Bureau.

17 THE COMMISSIONER: Detective Inspector Hall.

18 MS. SACCOCCIO BRANNAN: Detective Inspector
19 Hall was not the subject of a ---

20 MR. HORN: Oh, I'm sorry, he's the one that
21 was -- made the allegations. I'm sorry, it wasn't he. It
22 was Constable Millar. But you were also the subject of an
23 investigation?

24 DEP. COMM. LEWIS: I was, and it was
25 Sergeant Millar at the time and now Detective Inspector

1 Millar, yes.

2 MR. HORN: Okay.

3 At that time, from what I understand,
4 Officer Millar was trying to get a promotion, right? This
5 is a period of time when he was going for a promotion?

6 DEP. COMM. LEWIS: It may be. I recall the
7 process for the promotion. I'm not sure if it was at that
8 exact same time period or not.

9 MR. HORN: And then Officer Hall then
10 brought forth certain conversations that had taken place.
11 One of them was with you.

12 How long before did he have that
13 conversation with you in which you really didn't think it
14 was that much of a -- you know, it wasn't a big issue and -
15 - but how long before these hearings took place?

16 THE COMMISSIONER: Hearings?

17 MR. HORN: I'm talking about the
18 Professional Standards hearings. How long beforehand ---

19 THE COMMISSIONER: I don't know there were
20 hearings. It was an investigation.

21 MR. HORN: Okay, an investigation.

22 THE COMMISSIONER: They did a review but no
23 hearing.

24 MR. HORN: How long before then?

25 DEP. COMM. LEWIS: I'm not sure of the exact

1 dates but a couple of years.

2 MR. HORN: So it would be a couple of years
3 before in which you had a conversation in which you didn't
4 take very much note of it at all, and yet two years later
5 it's used in an investigation?

6 DEP. COMM. LEWIS: That's what occurred,
7 yes.

8 MR. HORN: Okay, and you were also being
9 investigated?

10 DEP. COMM. LEWIS: I was.

11 MR. HORN: And you were investigated because
12 Millar had -- was supposed to have told you, right ---

13 DEP. COMM. LEWIS: No, Millar ---

14 THE COMMISSIONER: No, no.

15 MR. HORN: Or was it ---

16 THE COMMISSIONER: Hall.

17 MR. HORN: Hall told you about this
18 situation?

19 DEP. COMM. LEWIS: That's correct, yes.

20 MR. HORN: And because you didn't do
21 anything, that brought you under the same microscope also -
22 - that you didn't do anything, Millar didn't do anything,
23 and other police officers didn't do anything of this
24 serious situation?

25 THE COMMISSIONER: Well, no, hold it.

1 If I remember correctly, there are two
2 phases to this report. First one was, what did Millar do
3 or not do, and they explored that fact.

4 **MR. HORN:** That's right.

5 **THE COMMISSIONER:** Then they went to phase
6 two and they said, "Okay, assuming for a moment that" --
7 well, they had to determine whether or not these people
8 were seized with the knowledge and whether they did
9 something or not as supervisors to Millar.

10 **MR. HORN:** Okay. That's what I -- I
11 understand that that's how it worked, but what I'm
12 suggesting to you as the person who was really involved in
13 Project Truth, a very key person in Project Truth, this is
14 the way he was conducting himself with fellow officers.
15 Was that ever ---

16 **MR. KOZLOFF:** Sorry ---

17 **MR. HORN:** In which he was making complaints
18 against fellow officers, right?

19 **DEP. COMM. LEWIS:** I don't believe -- to my
20 knowledge, Pat Hall never made a complaint. It's just an
21 issue that arose during the review of the material in
22 preparation for the Inquiry, and it was decided that it
23 should be investigated.

24 **MR. HORN:** It wasn't him pushing it then,
25 you're saying?

1 **DEP. COMM. LEWIS:** Well, he certainly made
2 the statement that he had -- in his actual statement that
3 he had told me about this issue with Randy Millar, and
4 during the course of the review of the material preparing
5 for this Inquiry, that was looked at in terms of whether or
6 not I had committed some breach of discipline by not taking
7 action. That was investigated, I was exonerated, and here
8 we sit.

9 **MR. HORN:** Okay.

10 Also, you knew that the motivating -- one of
11 the motivating factors was the fact that Hall did not like
12 Millar. You mentioned it in your statement, that he was --
13 -

14 **MS. SACCOCCIO BRANNAN:** Maybe Mr. Horn could
15 -- excuse me, Mr. Horn.

16 Maybe it would be helpful if Mr. Horn could
17 take Deputy Commissioner Lewis to this statement.

18 **THE COMMISSIONER:** M'hm.

19 **MR. HORN:** Okay.

20 **THE COMMISSIONER:** Were you aware of any
21 conversation or any memo where it was said that Mr. Hall
22 did not like Mr. Millar?

23 **DEP. COMM. LEWIS:** I'd have to look at my
24 statement. I know that my sense was during that coffee
25 room conversation with Pat Hall years ago, his comments

1 were just kind of a negative comment about Randy Millar as
2 opposed to a complaint. And whether or not it was because
3 he didn't like Randy Millar, I just felt it was more kind
4 of a coffee room conversation about somebody that occur in
5 coffee rooms all over the world, I suppose.

6 **MR. HORN:** I've seen -- I'm just trying to
7 find it, but I noticed in the statement that that was
8 mentioned; that you noticed that there was a -- that there
9 was some animosity towards Millar by Hall, and that was one
10 of the ---

11 **THE COMMISSIONER:** Okay, just a second.
12 Yes?

13 **MS. SACCOCCIO BRANNAN:** Maybe we could ---

14 **THE COMMISSIONER:** You've got to speak in
15 the mike.

16 **MS. SACCOCCIO BRANNAN:** Maybe it would be
17 helpful for Deputy Commissioner Lewis to look at 2915,
18 Document Number 738872.

19 **THE COMMISSIONER:** Twenty-nine-fifteen
20 (2915). So 2915 you have, right?

21 **DEP. COMM. LEWIS:** Yes, I have that here,
22 sir.

23 **(SHORT PAUSE/COURTE PAUSE)**

24 **THE COMMISSIONER:** Okay. Well, the last
25 paragraph of page 7174094, four lines from the bottom, it

1 says:

2 "Detective Inspector Hall's comments
3 were not direct nor were they a
4 complaint in my view, but in my
5 assessment were more his expression of
6 the dislike of Detective Sergeant
7 Millar."

8 **DEP. COMM. LEWIS:** I see that there, yes.

9 **MR. HORN:** Okay. Do you remember that? Do
10 you recall that?

11 **DEP. COMM. LEWIS:** I recall that now, yes.

12 **MR. HORN:** Okay, so you -- in that
13 statement, it would seem that you understood that really,
14 possibly, the motivation was more because there was some
15 dislike of Detective Sergeant Millar. You detected that?

16 **DEP. COMM. LEWIS:** Yeah. Not a motivation
17 for anything but just the statement he made was more a kind
18 of an expression of not liking him or not liking something
19 that he had done or something about him, but that's about
20 all I can say.

21 **MR. HORN:** Okay, I know that, but here we
22 have a fellow police officer doing that to another officer.
23 It seems like one of the motivating factors was this
24 feeling that he has towards Millar, and yet he would be
25 willing to put somebody through this kind of abuse, really.

1 **DEP. COMM. LEWIS:** I'm not sure what you
2 meant, by doing what to ---

3 **MR. HORN:** By making these kinds of
4 allegations against a fellow police officer.

5 **THE COMMISSIONER:** Well ---

6 **MR. HORN:** I mean, it's kind of a -- I mean,
7 this is the individual who's in charge of Project Truth and
8 he would do this against another police officer?

9 **DEP. COMM. LEWIS:** I still don't know what
10 you mean by doing what?

11 **MR. HORN:** I'm talking about out of anger
12 having him brought before the Professional Standards Bureau
13 and having him testify against his fellow police officers.

14 **THE COMMISSIONER:** Sir, what's the relevance
15 of all of this to this Inquiry?

16 **MR. HORN:** He's the man that was in charge
17 of Project Truth and this is the way he conducts himself in
18 his relationships with other police officers that he's
19 supposed to be working with. I mean, we're dealing with a
20 man who was in charge of Project Truth.

21 **THE COMMISSIONER:** Well, sir, we've heard
22 the evidence about that incident.

23 **MR. HORN:** I understand.

24 **THE COMMISSIONER:** And from what I recall,
25 even I think Mr. Millar indicated, "Well, maybe I should

1 have put it on OMPPAC or I should have done something else
2 in retrospect."

3 So, I mean, isn't there a grain there that
4 maybe somebody has a genuine interest in -- you know, in
5 that lacune, because in the end it seems there's some
6 evidence that some people were hurt because of this non-
7 action. Well, not because of this -- things could have
8 changed, been done differently, and it might have saved
9 some young people.

10 **MR. HORN:** Oh, I understand that.

11 **THE COMMISSIONER:** Right.

12 **MR. HORN:** But I'm just saying that what we
13 were dealing with ---

14 **THE COMMISSIONER:** Yes.

15 **MR. HORN:** --- is a police officer who,
16 rather than going and working with Mr. Millar ---

17 **THE COMMISSIONER:** M'hm.

18 **MR. HORN:** --- let's get the job done, we
19 get a whole process in which the guy is brought up on --
20 before the Professional Standards Bureau and he's put into
21 a position where he's jeopardized because of something that
22 could have been dealt with right at the beginning, "Let's
23 work together and catch Leblanc; let's do something." He
24 could have gone to Millar and said, "Let's deal with it.
25 We'll have him arrested. I'll bring my men in. We'll do

1 surveillance on him,"

2 MR. CARROLL: If I may?

3 THE COMMISSIONER: Yeah.

4 MR. CARROLL: The mischief that's being
5 created in this room by allowing these speeches to go on,
6 sir, in my respectful submission should be stopped. He's
7 talking about Hall doing things in anger. There's no
8 evidence of doing anything in anger. He's talking about
9 Hall and Millar working together in Project Truth. Millar
10 was no part of Project Truth.

11 But to allow the speechifying to continue,
12 in my respectful submission, harms the individuals that are
13 being named in these comments.

14 THE COMMISSIONER: Well, I don't think so,
15 in the sense that we know that this is cross-examination.
16 We know that I'm going to stop him at this point and so,
17 no, I think people who are watching this understand that
18 people say some things; we either correct them or change
19 the channel.

20 Thank you.

21 MR. CARROLL: Okay.

22 THE COMMISSIONER: Mr. Horn, please ---

23 MR. HORN: Yes.

24 THE COMMISSIONER: --- let's focus on the
25 Inquiry and -- so what is your point? Your point is that

1 Mr. Hall was incompetent to head Project Truth because of
2 this?

3 **MR. HORN:** No, he had some flaws in his
4 character in the way he dealt with people and he shouldn't
5 have been put in charge of Project Truth.

6 I'm just saying whoever put him in charge
7 certainly put the wrong man in charge of Project Truth, and
8 I'm suggesting that that was a mistake higher up in the
9 OPP.

10 **THE COMMISSIONER:** So what I ---

11 **MR. HORN:** And I think they knew what kind
12 of a person he was. I'm sure they knew what he ---

13 **THE COMMISSIONER:** Just a minute now. No,
14 no.

15 Sir, you know, I asked you what your point
16 was, and your point is -- and I'll respect your point of
17 view. You're saying that -- and see, in cross-examination
18 you have to put it to Deputy Lewis, "I put it to you, sir,
19 that this is an -- this situation is an indication that Mr.
20 Hall should not have been put in that position."

21 **MR. HORN:** That's obvious.

22 **THE COMMISSIONER:** No, no, no, no. No, no,
23 no, no. No, no, no. You're not answering the questions;
24 the witness is. All right? And that's the way you do it,
25 is you ---

1 **MR. HORN:** I know.

2 **THE COMMISSIONER:** --- put the question to
3 him.

4 **MR. HORN:** I know. Okay. All right.

5 **THE COMMISSIONER:** All right. And then you
6 let it go. Then you can put it in submissions.

7 So, sir, given that what we see here is
8 being characterized by Mr. Horn as a character flaw, that
9 perhaps Mr. Hall was motivated by dislike, or whatever
10 else, to point the finger to Mr. Millar -- to Officer
11 Millar's, at that time, inefficiency in this one area, he
12 wants to put it to you that he was not the right man for
13 the job.

14 Do you have any comments on that?

15 **DEP. COMM. LEWIS:** I certainly do have some
16 comments on that. I totally disagree with you. There's
17 nobody better to have that job than Pat Hall. Pat Hall has
18 incredible integrity, incredible credibility. I think the
19 world of him as an investigator and as a case manager.

20 Because he made a comment around something
21 that in his perception Randy had not done to the best of
22 his ability, or whatever it was, and they disagreed
23 potentially at that time on how that should be handled, and
24 there's been evidence heard to the contrary on that since
25 by Mr. Millar, I don't perceive that as a character flaw,

1 nor do I see it as a reason why he shouldn't have been in
2 charge of Project Truth.

3 **MR. HORN:** All right. Thank you.

4 **THE COMMISSIONER:** Next point.

5 **MR. HORN:** Okay.

6 There was quite a lot of evidence that you
7 gave regarding how the OPP have really stepped up their
8 training in regards to sexual assault investigations.
9 There's been more effort in training police officers to do
10 that kind of work. You agree with me on that?

11 **DEP. COMM. LEWIS:** Well, throughout policing
12 in Ontario, as a result of the Adequacy Standards, there
13 has been vast improvements in the training of police
14 officers. And the OPP, of course, follows that standard,
15 and we always meet or exceed those training standards, and
16 so we've made changes to our course over that time as well,
17 and we've trained thousands more people than we had trained
18 back at the time of Project Truth.

19 **MR. HORN:** Okay. Would you agree with me if
20 I said that the work that was done by Constable Dunlop and
21 Guzzo in pushing the OPP to change its ways by doing things
22 the way they did, they went outside the norms, pushed for
23 an inquiry, had things done, is what made you have to
24 change in your training of your police officers in having
25 to come into the 21st century?

1 **DEP. COMM. LEWIS:** Any changes that we've
2 made as an organization have had nothing to do with Garry
3 Guzzo or Perry Dunlop whatsoever. The changes that have
4 been made were standards that the government put in place
5 for all of policing, and I'm sure when they sat down and
6 wrote those standards they didn't -- weren't thinking about
7 Mr. Guzzo or Mr. Dunlop.

8 They did what was the right thing to do as
9 things emerge in society and as trends occur and things
10 improve in other police services around the world -- that's
11 all watched and monitored -- and as a result they made
12 recommendations for change that were implemented in
13 Ontario. I don't see the connection.

14 **MR. HORN:** Well, I'm suggesting to you the
15 connection is that in the early nineties, because of the
16 actions of Mr. Dunlop and then later on with Mr. Guzzo, OPP
17 had to do something and they did it because of the pressure
18 that was put on them by the public through the agitation of
19 Mr. Guzzo and Mr. Dunlop.

20 **DEP. COMM. LEWIS:** Well, in that I accept
21 your suggestion, sir. I don't agree though.

22 **MR. HORN:** You don't agree with that?

23 **DEP. COMM. LEWIS:** No.

24 **MR. HORN:** Thank you.

25 **THE COMMISSIONER:** Thank you.

1 On that note, we'll take the morning break.

2 **THE REGISTRAR:** Order; all rise. À l'ordre;
3 veuillez vous lever.

4 This hearing will resume at 11:15 a.m.

5 ---Upon recessing at 11:02 a.m./

6 L'audience est suspendue à 11h02

7 ---Upon resuming at 11:20 a.m./

8 L'audience est reprise à 11h20

9 **THE REGISTRAR:** Order; all rise. À l'ordre;
10 veuillez vous lever.

11 This hearing is now resumed. Please be
12 seated. Veuillez vous asseoir.

13 **CHRISTOPHER LEWIS, Resumed/Sous le même serment:**

14 **THE COMMISSIONER:** Hurry up, Mr. Lee, you
15 can get the offensive questions in first.

16 **MR. LEE:** I'll ask the objectionable
17 questions right off the bat before Mr. Kozloff is paying
18 attention.

19 **(LAUGHTER/RIRES)**

20 **---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR. LEE:**

21 **MR. LEE:** I'll introduce myself while we
22 wait. My name is Dallas Lee. I'm counsel to the Victim's
23 Group. I have just a few areas that I want to discuss with
24 you and I'm going to start with training once your counsel
25 is here.

1 We're already halfway in.

2 **MS. DALEY:** It's gone well so far.

3 (LAUGHTER/RIRES)

4 **MS. SACCOCCIO BRANNAN:** My apologies.

5 **MR. KOZLOFF:** I apologize, sir, especially
6 to Mr. Lee.

7 **THE COMMISSIONER:** Mr. Kozloff is just
8 envious of your ties.

9 **MR. LEE:** I know. He has been looking at it
10 most of the day.

11 Sir, as I said, I want to ask you about
12 training, following you up on the end of your examination-
13 in-chief yesterday. And as you know, at the Inquiry we've
14 looked at a few cases where the interactions between police
15 officers and Crown attorneys are at issue.

16 I'm wondering whether you are aware of any
17 joint training involving police and Crown attorneys
18 relating to the management of major cases, specifically
19 focused on the interactions and the relationship between
20 Crown attorneys and police officers on those cases.

21 **DEP. COMM. LEWIS:** I am not aware. I'm a
22 little out of the loop on that sort of thing. I was
23 involved when major case management first started to be
24 formed and introduced. I know there was discussions with
25 Crown attorneys at that time.

1 On an ongoing basis I'm not aware, other
2 than on the local level the Crown attorneys will at times
3 attend and address or be part of panel discussions at local
4 crime conferences, for example. The one they had in the
5 Eastern Region in November they actually had a Crown, a
6 judge and a defence attorney there as part of the
7 discussions around investigating and managing historical
8 cases.

9 But I don't know of anything that is
10 actually ingrained in a training curriculum anywhere.

11 **MR. LEE:** We've heard a lot, as an example,
12 of joint training between police officers and CAS workers
13 where it's a little bit more intuitive and you can think of
14 -- they both have an investigative role at times, both
15 concerned directly with the protection of children and
16 things along those lines.

17 **DEP. COMM. LEWIS:** For sure.

18 **MR. LEE:** The police and Crown it's not
19 exactly the same but, given what we have seen at this
20 Inquiry where we have -- you know, you can have long-
21 established working relationships, major cases, a project
22 like Project Truth that lasts a number of years, not
23 dedicated Crowns on that case but Crowns were involved for
24 a long period of time.

25 And I'm just wondering if you know of

1 anything since Project Truth or that's in the offing where
2 there are specific efforts to help that collaboration along
3 and have some training in place.

4 **DEP. COMM. LEWIS:** No, I'm sorry, I don't
5 know of anything.

6 **MR. LEE:** Okay. And with respect to
7 training relating to the investigation of historic sexual
8 assaults I wasn't exactly clear on whether or not there is
9 anything currently in place dealing specifically with
10 historic investigations.

11 **DEP. COMM. LEWIS:** I am told that our sexual
12 assault course that we run, which is a one-week course and
13 is ultimately accredited by the Ontario Police College,
14 that there is a piece on historical sexual assault
15 investigations now. I haven't seen that. However, as I
16 said yesterday, there is a committee that's comprised of
17 our academy and investigative personnel who are going to
18 sit down and look at the current courses, some of the
19 issues that have been identified from a training
20 perspective at this Inquiry, and ensure that there are no
21 gaps if in fact there are any.

22 I think some of that has changed over recent
23 years. I know for a while there wasn't anything about
24 historical sexual assaults. I'm told that recently
25 something has gone in. I just don't know what in fact that

1 is.

2 **MR. LEE:** And we had at the beginning of
3 this Inquiry -- I'm not sure you're aware -- some
4 contextual evidence from the various institutions involved,
5 and some expert evidence as well. My recollection was at
6 various times there were very loose modules within a larger
7 course that touched on historic abuse.

8 Are you aware of there having been a
9 specific course targeted specifically at historic sexual
10 assault?

11 **DEP. COMM. LEWIS:** I'm not aware of that
12 whatsoever.

13 **MR. LEE:** And that's something ---

14 **DEP. COMM. LEWIS:** If anything it's just a
15 module of a larger curriculum.

16 **MR. LEE:** And that, I take it, is something
17 that will be looked at by the OPP in terms of its overall
18 review of training and where gaps exist and what can be
19 done?

20 **DEP. COMM. LEWIS:** Certainly, and I did
21 speak to the director of the Ontario Police College and he
22 is well aware of Project Truth, of course, and this
23 Inquiry, I should say, and ultimately is very open as well
24 to looking at the courses they give, the courses they
25 accredit in other police departments like the OPP, and

1 making sure that it all fits together and that there are no
2 gaps where there has been needs identified.

3 **MR. LEE:** And I take it as a result of this
4 Inquiry there has been some recognition by the OPP of some
5 of the unique challenges faced during the course of a
6 historic abuse case as opposed to a typical, more current
7 sexual abuse case?

8 **DEP. COMM. LEWIS:** Certainly, and from an
9 operational perspective we have learned from that already.
10 The investigation I spoke of a few times yesterday in the
11 Pembroke area involved a CIB inspector named Jeff Bahm.

12 Ultimately, he turned to the Project Truth
13 people to see what some of those things were so that he can
14 embed those things into his investigation, including the
15 operation or the role of the abuse issues coordinator and
16 the historical piece, and actually communicated to me some
17 of those learnings in terms of the difficulties and, you
18 know, memories over time and establishing specific dates
19 and times and places and whatnot.

20 So we are very alive to that, and how that
21 all transcends ultimately into the training curriculum has
22 yet to be seen but it will.

23 **THE COMMISSIONER:** Well, I'd just like to
24 expand on that. Mr. Lee is talking about historical sexual
25 abuse. Now, can we throw in as well the male component of

1 that?

2 **DEP. COMM. LEWIS:** Yes, sir.

3 **THE COMMISSIONER:** Has there been anything
4 on that front?

5 **DEP. COMM. LEWIS:** Yes, and I'm not aware of
6 anything in the courses now. It's happened in the
7 seminars.

8 **THE COMMISSIONER:** M'hm.

9 **DEP. COMM. LEWIS:** And the conferences that
10 we put on in North Bay and Orillia this past year. And
11 without a doubt we're alive to the issue. We are going to
12 make a lot better use of our abuse issues coordinators and
13 hopefully get more of those people at the detachment level,
14 and they are very focused on the male victimization issue,
15 as was Detective Inspector Bahm when he started that
16 investigation based on what Project Truth learned and what
17 this Inquiry has seen.

18 **MR. LEE:** And you spoke yesterday with
19 Mr. Dumais -- and I don't need you to turn it up, but
20 Exhibit 2916 is the Ontario Provincial Police Abuse Issues
21 Management Past, Present and Future, the document that tied
22 into your recommendations.

23 **DEP. COMM. LEWIS:** Yes.

24 **MR. LEE:** And the last bullet there spoke of
25 the understanding and responding to male sexual

1 victimization one-day conference that you said the OPP has
2 had some success with.

3 **DEP. COMM. LEWIS:** Yes, there was
4 conferences run in April in Orillia, in November in North
5 Bay; 150 trained at each. Police services and agencies
6 like Children's Aid were involved as well.

7 **MR. LEE:** And as I understood that, it
8 wasn't necessarily geared towards historic abuse, just
9 generally issues that arise in male sexual abuse cases.

10 **DEP. COMM. LEWIS:** That's correct, that was
11 the focus.

12 **MR. LEE:** I take it whether or not there
13 needs to be something added or some supplement to that to
14 deal specifically with the historic male victim of abuse is
15 something you'll be looking at as well.

16 **DEP. COMM. LEWIS:** Certainly. We need to
17 make sure that all those gaps are addressed where they in
18 fact do exist. And I understand some of that has happened
19 already but, once again, we'll go through the exercise to
20 make sure that we move forward with an appropriate
21 strategy.

22 **MR. LEE:** You spoke a little bit yesterday
23 about Adequacy Standards and, as I understood your
24 evidence, you told us that the Adequacy Standards dictate
25 that sexual assaults investigators need to have a defined

1 amount of training. Am I right about that?

2 **DEP. COMM. LEWIS:** That's correct.

3 **MR. LEE:** Do you know if the Adequacy
4 Standards addressed the mandatory training for historic
5 sexual assault investigations? Is there a distinction
6 drawn there?

7 **DEP. COMM. LEWIS:** I don't believe they did.

8 **MR. LEE:** Do you have any thoughts on
9 whether or not that may be helpful?

10 **DEP. COMM. LEWIS:** It may be. Ultimately,
11 if the course that is mandated that all investigators have
12 to have has that component, then by virtue of that that'll
13 -- then all the officers will get that training. So really
14 it may not be necessary to have the standard as long as the
15 training the standard dictates has that in it.

16 **MR. LEE:** And you told us about a major
17 change when the Adequacy Standards came in, and is it fair
18 for me to suggest that one of the benefits of the Adequacy
19 Standards is that the OPP at that point knew what it had to
20 do? It was defined. It was clearly mandated. There was
21 no choice in the matter.

22 There was no room for making decisions on --
23 you know, there is no cost-benefit analysis there. Here is
24 what you have to do and you go ahead and you do it?

25 **DEP. COMM. LEWIS:** Well, certainly, that is

1 a benefit. I mean we were doing a lot of the things
2 anyway, but it really defines what the curriculum has to
3 include and it defines it for all police agencies in
4 Ontario. So all police officers are then working from the
5 same basic foundation.

6 As I said yesterday as well, we always want
7 to meet or exceed adequacy, so it doesn't prevent us from
8 doing much more than we do but it does at least tell us
9 what the bare minimum needs to be.

10 So then as a result of that and, of course,
11 through the training efforts over the years to follow,
12 we've got thousands of police officers trained in sexual
13 assault investigations to at least that standard and then
14 we further that by doing things like the conferences I
15 spoke of, the crime conferences on the local level to build
16 from that, but we didn't have any of that in 1997.

17 **MR. LEE:** I want to speak to you very
18 briefly about your meeting with Garry Guzzo on November
19 22nd, 2000. And you discussed that yesterday and you told
20 us that at the end of the meeting Mr. Guzzo apologized for
21 being critical of the Ontario Provincial Police and
22 explained that his intention had been to criticize the
23 Cornwall Police more than the Ontario Provincial Police.

24 **DEP. COMM. LEWIS:** That's what he said, yes.

25 **MR. LEE:** And I'd like to take you, please -

1 - this is a new document, Madam Clerk -- 125179. This was
2 a Commission Counsel document on the LOD.

3 (SHORT PAUSE/COURTE PAUSE)

4 THE COMMISSIONER: Thank you.

5 Exhibit 2918 is notes of Detective
6 Superintendent -- then Detective Superintendent Director --
7 -

8 MR. LEE: They're not, sir. I believe these
9 are Mr. Guzzo's notes and he simply photocopied the cards
10 that were given to him at the meeting.

11 THE COMMISSIONER: Okay, good. So 2918 is
12 documents from Mr. Guzzo.

13 --- EXHIBIT NO./PIÈCE NO. P-2918:

14 (125179) - Notes of Gary Guzzo meeting -
15 November 22, 2000

16 MR. LEE: You have that before you, sir?

17 DEP. COMM. LEWIS: I do.

18 MR. LEE: And as I told the Commissioner, I
19 believe that you and Mr. Hall would have provided Mr. Guzzo
20 with business cards and he simply photocopied them and
21 appended them to his notes.

22 DEP. COMM. LEWIS: That appears to be the
23 case, yes.

24 MR. LEE: And so if you turn to the third
25 page of the document ending in Bates page 116, you see the

1 date is November 22nd, 2000. Do you see that?

2 **DEP. COMM. LEWIS:** I do.

3 **MR. LEE:** And he has "11:00 a.m. meeting
4 with Hall and Lewis", and Brian Coburn 10 minutes late, and
5 the start of the meeting at 11:02. Do you see that?

6 **DEP. COMM. LEWIS:** I do.

7 **MR. LEE:** And the first heading he has is --
8 it appears to be "Mistakes of GJG", so presumably mistakes
9 of Garry Guzzo, and the first one relates to the press
10 conference of Christmas Eve that he spent a lot of time
11 talking about, and it's pointed out there that it was only
12 a press release. You see that?

13 **DEP. COMM. LEWIS:** Yes, I do. It's hard to
14 -- very difficult to read.

15 **MR. LEE:** It is.

16 And if we skip down to number 3, which is
17 what I'm interested -- again, this is in a list that he's
18 titled "Mistakes of Garry Guzzo". He writes:

19 "Too harsh on OPP. Cornwall Police at
20 fault. OPP did..."

21 And it looks to me like "job":

22 "OPP did job."

23 **DEP. COMM. LEWIS:** That's what it appears to
24 be, yes.

25 **MR. LEE:** And, at least from the reading of

1 this note, it appears as though it's suggesting that you
2 and/or Mr. Hall were suggesting to Mr. Guzzo that he was
3 being too hard on the OPP and that he should look at the
4 Cornwall Police instead.

5 **DEP. COMM. LEWIS:** Not at all. There was no
6 criticisms of the Cornwall Police whatsoever during that
7 meeting.

8 **THE COMMISSIONER:** By yourself?

9 **DEP. COMM. LEWIS:** By myself. The only
10 comment about the Cornwall Police was the one that we spoke
11 of a minute ago, where Mr. Guzzo himself said he meant to
12 be critical of them, not us.

13 **MR. LEE:** So now is my next point.

14 This note aside, your evidence is that Mr.
15 Guzzo said to you that he had meant to criticize the CPS
16 and not the OPP?

17 **DEP. COMM. LEWIS:** He did.

18 **MR. LEE:** And you've obviously spent time
19 preparing for this Inquiry looking at various materials
20 relating to Garry Guzzo?

21 **DEP. COMM. LEWIS:** I have, sir, and if I
22 could just back up, if that's all right.

23 And he says that "too hard on the OPP". We
24 never suggested that. We never ever said to him we don't
25 want you criticizing us or that you're being critical of

1 us, we just basically pointed out facts that he had made
2 and the reality in terms of the misinformation he was
3 providing. We never ever expressed to him that we're
4 concerned that you're picking on us or you're being hard on
5 us. That piece of the conversation did not occur.

6 So that's obviously just his thought, in my
7 view, because we never ever told him he was being hard on
8 us. And certainly we didn't mention Cornwall Police in a
9 negative way whatsoever.

10 **MR. LEE:** Dealing with the "too hard on OPP"
11 comment, it's not attributed as a quote or anything like
12 that, but mustn't that have been the impression that you
13 left?

14 **DEP. COMM. LEWIS:** That must be the
15 impression that he got. I'd only be guessing. I don't
16 really know.

17 **MR. LEE:** And wasn't that to some extent the
18 impression you were trying to convey?

19 **DEP. COMM. LEWIS:** No, not at all. The
20 facts that he was presenting to the public were inaccurate.
21 Now, our underlying thought around that was -- and part of
22 that, we were getting beaten up in the press for sure, but
23 we never ever said those words to him.

24 **MR. LEE:** Sir, can we just take a very quick
25 look, please, at -- let's try Exhibit 1005, please. And,

1 as you know, Mr. Guzzo wrote many letters and made many
2 statements and I've just picked a couple.

3 This is a letter that he wrote to the editor
4 of the Standard Freeholder about Bill 103, and you can see
5 that in point number 1 he's setting out the fact that Bill
6 103 is concerned with police behaviour in the Cornwall
7 area.

8 Point number 3 expands on that a little bit
9 and speaks of the Christmas Eve conference in 1994, about
10 the Ontario Provincial Police saying there had been no
11 stone unturned; about the OPP stepping back to Cornwall
12 unannounced and commencing Project Truth.

13 The last paragraph of that page speaks of
14 people in authority at the OPP.

15 The first paragraph on page 2:

16 "I am concerned that if there has been
17 an incompetent investigation or if
18 there has been a cover-up, that the
19 Ontario Provincial Police, which
20 operates in other jurisdictions across
21 this province, could be practising the
22 same incompetence or the same behaviour
23 that resulted in this cover-up."

24 Similarly, if you flip over in your binder
25 to Exhibit 1008 ---

1 DEP. COMM. LEWIS: Yes.

2 MR. LEE: --- we have his October 4th, 2000
3 letter to his colleagues and, again, if you flip through
4 this a little bit you'll see that the complaints almost
5 entirely -- and it's -- if you turn to the fourth page of
6 the letter, he sets out his issues. Bates page -- I'm a
7 Exhibit 1008.

8 And, sir, you'll see he speaks in issue 1
9 about Project Truth commencing, and asks a number of
10 questions:

11 "Was the first investigation totally
12 botched and very incompetently handled?
13 Was there an attempted cover-up? Is
14 there a third possible answer?"

15 And if you turn over, issue number 2 is
16 about Pat Hall. Issue number 3 is about Deputy
17 Commissioner Frechette.

18 My only point in all this, sir, is would you
19 not agree with me that the -- throughout his interest in
20 this matter, Mr. Guzzo's concern was primarily the OPP and
21 not Cornwall Police?

22 DEP. COMM. LEWIS: Yeah, reading that
23 letter, he's certainly concerned about us. I don't know
24 what else he has said publicly or in any other writings,
25 but just based on that letter, yes.

1 **MR. LEE:** And so I'm left to wonder why, at
2 the end of a meeting with you, he would say to you that he
3 had intended to criticize the Cornwall Police and not the
4 OPP.

5 **DEP. COMM. LEWIS:** I have no idea why he
6 said that. I have no idea why he said many things he said
7 over the course of a few years.

8 **MR. LEE:** Is it possible you're mistaken,
9 sir, about ---

10 **DEP. COMM. LEWIS:** No.

11 **MR. LEE:** And, finally ---

12 **DEP. COMM. LEWIS:** Well, no. I mean, he
13 says it in his notes himself; Mr. Guzzo does.

14 **MR. LEE:** Says what in his notes himself?

15 **DEP. COMM. LEWIS:** That he mentioned "too
16 hard on the OPP" et cetera, et cetera. The fact that he
17 said the Cornwall Police without a doubt occurred.

18 **MR. LEE:** He undoubtedly had concerns with -
19 --

20 **DEP. COMM. LEWIS:** With?

21 **MR. LEE:** --- a number of institutions and
22 players in this entire matter?

23 **DEP. COMM. LEWIS:** He had many concerns,
24 yes.

25 **MR. LEE:** Getting back to the original

1 question, you don't -- you take issue with Mr. Guzzo's
2 notation that it was the OPP telling him to put the focus
3 on CPS and not the OPP?

4 **DEP. COMM. LEWIS:** I do, yes.

5 **MR. LEE:** Ms. Daley during her cross-
6 examination asked you about Exhibit 2524.

7 **DEP. COMM. LEWIS:** Two-five-two-four (2524).

8 **MR. LEE:** This is the Toronto Sun article by
9 Michael Harris and ---

10 **THE COMMISSIONER:** Hang on, sir. We'll put
11 it on the screen.

12 **DEP. COMM. LEWIS:** Yes.

13 **MR. LEE:** This is the fairly lengthy article
14 that Ms. Daley asked you about -- some comments by Retired
15 Detective Sergeant Tim Smith.

16 **DEP. COMM. LEWIS:** Detective Inspector
17 Smith, yes.

18 **MR. LEE:** Okay, they got that wrong in the -
19 - so it was suggested that the comments in here were the
20 comments of a retired officer and therefore not to be taken
21 as comments of the OPP. Do you recall that?

22 **DEP. COMM. LEWIS:** I remember that
23 discussion occurring here, yes.

24 **MR. LEE:** If you can look, Madam Clerk, at
25 the paragraph beside the picture? That's the one.

1 Mr. Harris, the author, speaks of pulling
2 into a Tim Hortons on Brookdale Avenue here in Cornwall and
3 inside meeting Detective Inspector Tim Smith, retired, and
4 Detective Superintendent Larry Edgar.

5 You see that?

6 **DEP. COMM. LEWIS:** Yes.

7 **MR. LEE:** Larry Edgar was not retired at
8 that time, was he?

9 **DEP. COMM. LEWIS:** What was the date of
10 this?

11 **MR. LEE:** April 5, '99.

12 **DEP. COMM. LEWIS:** April 5, '99. I don't
13 know when Superintendent Edgar retired. It would have been
14 around that time, but I'm not sure.

15 **MR. LEE:** If you follow down, Madam Clerk,
16 to the next paragraph?

17 The author speaks of following what he
18 describes as a "ghost car" through the streets of Cornwall
19 to the Project Truth headquarters. Do you see that?

20 **DEP. COMM. LEWIS:** I do.

21 **MR. LEE:** And over on the next page, the
22 third full paragraph speaks of Mr. Smith having been the
23 leader of Project Truth for half of its -- half of the time
24 it's been in operation. You see that?

25 "For half that time, Smith has been the

1 leader of Project Truth."

2 **DEP. COMM. LEWIS:** Yes.

3 **MR. LEE:** If we turn over another page,
4 Madam Clerk? The computer's giving you some trouble but if
5 you can look at the bottom half of the page?

6 The preceding page and at the top of this
7 page, the author is quoting Mr. Smith to some extent and
8 then here we have -- in the second paragraph below the
9 picture we have:

10 "Sitting to my right, Edgar chimes
11 in. 'To tell you the truth, we
12 wondered why Dunlop didn't give those
13 complaints to us rather than Chief
14 Fantino'."

15 And then a couple of paragraphs down, we
16 have comments from Detective Sergeant Pat Hall. Do you see
17 that?

18 **DEP. COMM. LEWIS:** I do.

19 **MR. LEE:** And we have -- I can tell you, we
20 have on the last page of the document if can go there
21 quickly -- again, the paragraph below the picture, we have
22 a paragraph that begins:

23 "Their boss, Edgar, also understands
24 the frustration of concerned citizens
25 such as Guzzo even though Edgar is

1 sensitive to Guzzo's desire..."

2 -- and so on, and it goes on to quote him in the next
3 paragraph.

4 And so on page 313, Ms. Daley took you --
5 back two more please, Madam Clerk -- Ms. Daley took you to
6 a couple of paragraphs -- "After investigating" -- right
7 there, Madam Clerk.

8 "After investigating the case for five
9 years, Smith is not convinced that
10 there ever was a paedophile clan in
11 Cornwall quite like the one Dunlop and
12 other people talked about, deviants who
13 manipulated the system to hide their
14 crimes, but he is certain that if there
15 ever was such a group, it is no longer
16 active.

17 'There's no evidence of a group or clan
18 of active paedophiles operating in
19 Cornwall today. It is true that a
20 number of the accused are Catholic but
21 there's no evidence of common victims.
22 Only five of the accused to date knew
23 each other, but in a town like Cornwall
24 everybody sort of knows everybody so
25 people tend to think the worst'."

1 Would you agree with me, based on the
2 content of the article, the author describes a meeting with
3 retired Detective Inspector Smith and Detective
4 Superintendent Edgar?

5 He speaks of being brought -- led to the
6 Project Truth offices by a "ghost" car. He speaks of being
7 inside the Project Truth headquarters. He speaks of an
8 interview with Hall, Edgar and Smith, that certainly any
9 member of the public reading this article would have
10 believed that this was an official comment from the OPP?

11 **DEP. COMM. LEWIS:** I would only be
12 speculating what people might think.

13 Certainly Edgar and Hall were apparently
14 still members of the OPP at the time. What their -- the
15 public's perception would be in terms of Smith -- it did
16 say he's retired in the article, but I -- I have to
17 speculate as to what people might read into that in the
18 public.

19 **MR. LEE:** You will concede, I take it, that
20 the article doesn't read as though a retired OPP officer
21 has come back to town and made some comments in isolation?
22 There's at least some air of an official statement from the
23 OPP here?

24 **DEP. COMM. LEWIS:** From Edgar for sure.
25 Smith, I guess some people could perceive that given that

1 he's -- it does say he's retired but he's with a serving
2 officer. I don't know. Once again, I'd only be guessing.

3 **MR. LEE:** That's fine, sir. Thank you those
4 are my questions.

5 **DEP. COMM. LEWIS:** Thank you.

6 **THE COMMISSIONER:** Thank you.

7 Mr. Neville?

8 --- CROSS EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

9 **MR. NEVILLE:**

10 **MR. NEVILLE:** Good morning sir. Good
11 morning, Deputy Commissioner.

12 **DEP. COMM. LEWIS:** Good morning, sir.

13 **MR. NEVILLE:** We've met.

14 **DEP. COMM. LEWIS:** We have.

15 **MR. NEVILLE:** I represent Father Charles
16 MacDonald. I also represent the Estate of Ken Seguin and
17 his family, and I just have a few minutes of questions for
18 you.

19 Could we start, Deputy Commissioner, with
20 Exhibit 2899 which is your notes if you have them handy?

21 **DEP. COMM. LEWIS:** Yes, sir.

22 **MR. NEVILLE:** And the reference is Bates
23 page ending in 658. Do you know what those are at the top-
24 left corner?

25 **DEP. COMM. LEWIS:** I do, yes.

1 **MR. NEVILLE:** And it's your notes of Monday,
2 October 16th, 2000?

3 **DEP. COMM. LEWIS:** Right.

4 **MR. NEVILLE:** And they go on for a number of
5 pages and this is a -- I take it this is a meeting that
6 includes yourself, Inspector -- is it Superintendent
7 Grasman?

8 **DEP. COMM. LEWIS:** Inspector.

9 **MR. NEVILLE:** Inspector, and Ms. Murray in
10 the media relations department or words similar to that?

11 **DEP. COMM. LEWIS:** That's correct yes.

12 **MR. NEVILLE:** And are you here essentially
13 to get a briefing primarily from Inspector Hall, so that
14 you will know what you're dealing with in anticipation of
15 trying to seek an interview with Mr. Guzzo?

16 **DEP. COMM. LEWIS:** Yes. Well, it was -- it
17 was two-fold really. I wanted to get really a briefing
18 from Inspector Hall and get up-to-speed on what the issues
19 were.

20 **MR. NEVILLE:** Okay.

21 **DEP. COMM. LEWIS:** I wanted Detective
22 Inspector Grasman in the room because he had been the
23 deputy director throughout the period that Inspector Smith
24 was in charge of Project Truth and Hall, so he had
25 some -- some knowledge there and I valued his opinion, and

1 I wanted Marilyn Murray in the room because I was looking
2 towards making a public statement or a press conference or
3 release around this.

4 I wanted us all to be on the same page as to
5 where everything stood and then strategize together, what
6 should we do next.

7 **MR. NEVILLE:** Is fair though to say that
8 this meeting on the issues that you were formulating in
9 your mind and the approaches you were developing, were
10 essentially triggered or motivated by the conduct of
11 Mr. Guzzo in his public statements?

12 **DEP. COMM. LEWIS:** That's correct.

13 **MR. NEVILLE:** All right.

14 Can we then look briefly for a moment at
15 Bates page 661.

16 **DEP. COMM. LEWIS:** Six-six-one (661). Yes.

17 **MR. NEVILLE:** At the bottom, there's a
18 heading "Citizen's Committee" in quotation marks and then a
19 list of names, Mr. Chisholm, Mr. Leroux, the Dunlops and
20 one or two others.

21 Was this information being provided to you
22 by Inspector Hall, that there was this -- shall we call it
23 -- organized group known as the Citizen's Committee?

24 **DEP. COMM. LEWIS:** I would assume so; that
25 that would have that information more so than the others in

1 the room.

2 **MR. NEVILLE:** Do you know if at that point,
3 mid-October, 2000, you yourself, through documents you'd
4 read or other briefings, were aware of a Citizen's
5 Committee operating here in the city?

6 **DEP. COMM. LEWIS:** I don't recall if I was
7 aware of it at that point or not.

8 **MR. NEVILLE:** Well, let me see if I can help
9 a little bit with that.

10 Let's look next at if I could, Commissioner,
11 it was referenced by the last counsel, Exhibit 1008? This
12 is, Commissioner, Mr. Guzzo's ---

13 **THE COMMISSIONER:** M'hm.

14 **MR. NEVILLE:** --- letter to the members.

15 **DEP. COMM. LEWIS:** Yes, sir.

16 **MR. NEVILLE:** Now, would I be correct,
17 Deputy Commissioner, that this document clearly was brought
18 to your attention?

19 **DEP. COMM. LEWIS:** You know, I was thinking
20 that when I looked at it earlier, sir, and I would believe
21 it would have been ---

22 **MR. NEVILLE:** Right.

23 **DEP. COMM. LEWIS:** --- but, you know, that
24 first week or two in there I was so overwhelmed with
25 documents, trying to get up some speed on things. I know

1 I've read this, I just don't remember when I read it.

2 **MR. NEVILLE:** All right. I want to refer
3 you to three or four parts of the document briefly.

4 Let's look at using the document's own
5 pages, page 2.

6 **DEP. COMM. LEWIS:** Yes.

7 **MR. NEVILLE:** And the heading at the top,
8 underlined, is "The Facts" and this, of course, is authored
9 by Mr. Guzzo. If you'd look at the fourth paragraph from
10 the top, it reads:

11 "In early 1994, a group of private
12 citizens organized themselves with
13 funding from a prominent western
14 Ontario businessman."

15 -- et cetera, right?

16 **DEP. COMM. LEWIS:** Right.

17 **MR. NEVILLE:** And if you look down two more
18 paragraphs:

19 "The citizen's group documented four
20 boxes of evidence, alleging that a
21 paedophile ring had existed and
22 possibly continued to exist. The
23 evidence consisted of affidavit
24 evidence of alleged victims, statements
25 of witnesses, and a damning and

1 culpatory statement of an admitted
2 perpetrator."

3 And if you'd finally look at -- sorry, next
4 look at the top of page 3 of the document.

5 **DEP. COMM. LEWIS:** Yes.

6 **MR. NEVILLE:** And you're familiar with the
7 document, that what is being referenced in that last
8 passage is the famous four boxes or four binders, right?

9 **DEP. COMM. LEWIS:** Right.

10 **MR. NEVILLE:** All right.

11 If we look at the top of the next page, it
12 talks about the receipt that Inspector Hall signed, "The
13 legal advisor to the committee".

14 Do you see that? The first sentence of
15 page 3 the top of the page.

16 **DEP. COMM. LEWIS:** Yes.

17 **MR. NEVILLE:** All right.

18 And if finally you'd look for me at
19 page -- using the numbers in the bottom corner -- if you
20 want to use the Bates number, it's 687.

21 **DEP. COMM. LEWIS:** Six-eight-seven (687),
22 yes.

23 **MR. NEVILLE:** Yes. The heading is "Issue
24 Number 6".

25 **DEP. COMM. LEWIS:** Right.

1 **MR. NEVILLE:** "Why would the Cornwall
2 Citizen's Committee upon receiving
3 funding in 1995..."

4 Right?

5 **DET. COM. LEWIS:** Right.

6 **MR. NEVILLE:** So this would appear to be the
7 organization or the committee, the citizen's committee,
8 referenced in your notes in the meeting on October 16th?

9 **DEP. COMM. LEWIS:** It must have been, yes.

10 **MR. NEVILLE:** Exactly. So let's just
11 look -- so there's no question as to what real allegation
12 is out in the community here.

13 Let's look if we can again at Exhibit 1008,
14 Bates page 685.

15 **THE COMMISSIONER:** Excuse me. You said
16 rumours out in the community? I'm sorry; I'm just ---

17 **MR. NEVILLE:** I don't think I said rumours.

18 **THE COMMISSIONER:** Allegations out in the
19 community.

20 **MR. NEVILLE:** Right.

21 **THE COMMISSIONER:** Okay. This is a letter
22 to the ---

23 **MR. NEVILLE:** To the members, yes, sir.

24 **THE COMMISSIONER:** So that's not in the

25 ---

1 **MR. NEVILLE:** What I said, sir, was the real
2 nature of the allegation being made by Mr. Guzzo.

3 **THE COMMISSIONER:** Right.

4 **MR. NEVILLE:** If I didn't say that, that's
5 what I meant to say.

6 **THE COMMISSIONER:** Okay.

7 **MR. NEVILLE:** So, in other words, the
8 position he's putting forward in legislature documents and
9 in the House.

10 So if we can look, Deputy, at Bates page
11 685. And Mr. Lee referenced at the bottom of the page the
12 three questions or options, so to speak; right?

13 **DEP. COMM. LEWIS:** Right.

14 **MR. NEVILLE:** And let's look finally at page
15 6 -- Bates pages 687 and 88, reading at the bottom. Have
16 you found that page?

17 **DEP. COMM. LEWIS:** I have the page, yes.

18 **MR. NEVILLE:** All right. Right at the
19 bottom:

20 "The issue is simply if there is no
21 third answer..."

22 And that takes us back to the previous
23 passage:

24 "...then how many more cover-ups are
25 taking place or are occurring in other

1 jurisdictions policed by the Ontario
2 Provincial Police at this hour? In the
3 alternative, how many more totally
4 incompetent investigations are
5 occurring, and is it necessary for
6 citizens to unit and spend their own
7 funds to do the work of the Ontario
8 Provincial Police who are paid to do
9 same with the taxes of these good
10 citizens?"

11 So the issue you were coming to grips with
12 in your new position basically was a member of the
13 legislature, a member of the Bar and a former judge
14 accusing your organization of corruption?

15 **DEP. COMM. LEWIS:** I never ---

16 **MR. NEVILLE:** At the very best,
17 incompetence?

18 **DEP. COMM. LEWIS:** Incompetence I would
19 agree with, yes. I never ---

20 **MR. NEVILLE:** And also ---

21 **DEP. COMM. LEWIS:** I never ever thought of
22 corruption.

23 **MR. NEVILLE:** Well, what would you call
24 cover-up by a police force?

25 **DEP. COMM. LEWIS:** Yeah, and once again, I

1 know I've seen this letter over time, sir. I don't
2 remember if I read it at the time there or not. But in my
3 mind and all through these years I've never ever though
4 about corruption.

5 **MR. NEVILLE:** Right.

6 **DEP. COMM. LEWIS:** I've just thought about
7 him really saying we're incompetent.

8 **MR. NEVILLE:** To accuse the OPP of its work
9 in this city, the three years that have been invested by
10 this point, three years plus of Project Truth, of cover-up,
11 is that not tantamount to certainly not honouring your oath
12 as police officers, you're covering up alleged ---

13 **DEP. COMM. LEWIS:** Oh, without a doubt.

14 **MR. NEVILLE:** Okay.

15 **DEP. COMM. LEWIS:** I've just never really
16 caught that before.

17 **MR. NEVILLE:** Right. Well, whatever.

18 **DEP. COMM. LEWIS:** That's just reality.

19 **MR. NEVILLE:** Sure. Sure.

20 Now, let's look briefly if we can at Exhibit
21 2825. This is a document, Commissioner, authored by
22 Inspector Hall.

23 **DEP. COMM. LEWIS:** Yes.

24 **MR. NEVILLE:** You're familiar with this one,
25 Deputy Commissioner?

1 DEP. COMM. LEWIS: I am.

2 MR. NEVILLE: And we know by looking at the
3 re: line that it is a draft -- it is a document drafted or
4 authored by Inspector Hall in direct response to the
5 exhibit we just spent some time with, Exhibit 1008, and he
6 is effectively answering the questions and issues raised by
7 Garry Guzzo, right?

8 DEP. COMM. LEWIS: He is.

9 MR. NEVILLE: Okay. And I just wanted to
10 make something very clear because I think one of my prior
11 colleagues slightly misstated the evidence, could we look
12 at Bates page 651, which is page 3 of the document itself?

13 DEP. COMM. LEWIS: Right.

14 MR. NEVILLE: And I want to just get this
15 very clear, this is dealing again with the question of the
16 four binders and what the OPP did or didn't have through
17 Mr. Dunlop. All right?

18 DEP. COMM. LEWIS: Okay.

19 MR. NEVILLE: If we look in the middle of
20 the page, just above the middle you see an italicized
21 paragraph. If you go above that you see:

22 "On July 23rd, '98 in a meeting with
23 Constable Dunlop it was learned that
24 the four binders had not been
25 received."

1 Are you with me?

2 **DEP. COMM. LEWIS:** I am.

3 **MR. NEVILLE:** All right.

4 The next paragraph:

5 "On July 31st, '98 Dunlop advised the
6 four binders could be picked up..."

7 And there's a reference to the famous
8 receipt signed by Inspector Hall, and the wording of it is
9 reproduced; right?

10 **DEP. COMM. LEWIS:** It is.

11 **MR. NEVILLE:** And the wording says:

12 "The Ontario Provincial Police Project
13 Truth investigators never received the
14 full package."

15 Right?

16 **DEP. COMM. LEWIS:** That's correct.

17 **MR. NEVILLE:** Now, let's look at what
18 Inspector Hall says next:

19 "This was to acknowledge receipt of the
20 material only. It was never stated I
21 had not seen this material prior to
22 this date."

23 So the distinction is this -- and I'm
24 suggesting that's what, among other things, you conveyed to
25 Mr. Guzzo -- once the material was looked at -- as

1 obviously the inspector did and we've asked him about that
2 -- it was clear that there was -- it was not something new,
3 in essence. It's not a question of what was seen, it's a
4 question of what was received. It had already been seen,
5 in essence; right?

6 **DEP. COMM. LEWIS:** I remember that being an
7 issue.

8 **MR. NEVILLE:** Right. Well, I just wanted to
9 touch on it because it's come up yet again today with
10 people perhaps not drawing the distinction between
11 receiving something and seeing it in one form or another.

12 **DEP. COMM. LEWIS:** My understanding at the
13 time, sir, was that information had been received from four
14 different sources, as I said, ---

15 **MR. NEVILLE:** Right.

16 **DEP. COMM. LEWIS:** --- and that some of that
17 had -- and those packages differed. And so I guess it
18 would have been seen from some other source, not
19 necessarily from whatever source is being referred to here,
20 I guess.

21 **MR. NEVILLE:** Exactly.

22 Now, let's look briefly if we can, Deputy
23 Commissioner, at Exhibit 1005. Again, it was referenced by
24 Mr. Lee a few minutes ago.

25 **THE COMMISSIONER:** That we'll put it on the

1 screen for you. I don't think we have 1005.

2 DEP. COMM. LEWIS: One zero zero five
3 (1005)?

4 MR. NEVILLE: Yes, sir.

5 DEP. COMM. LEWIS: I do have that.

6 THE COMMISSIONER: Okay, good. Go ahead.

7 MR. NEVILLE: Now, you'll note the date on
8 this piece of correspondence, Deputy, is September 13th;
9 right?

10 DEP. COMM. LEWIS: Correct.

11 MR. NEVILLE: So this predates the document
12 authored by Mr. Guzzo and distributed to the Members of the
13 House because it's October 3rd. So this is a couple of
14 weeks before that, right?

15 DEP. COMM. LEWIS: Yes.

16 MR. NEVILLE: Now, the OPP had been working
17 on and off in this community since early 1994 when
18 Inspector Smith did his '94 review; right? You knew that?

19 DEP. COMM. LEWIS: Yes.

20 MR. NEVILLE: And the file was, so to speak,
21 kept open through -- and events happened in '95 and there
22 were charges laid against my client, Father MacDonald, in
23 '96 and then Project Truth was struck in the spring of '97
24 and by the fall of 2000 it had been operating here for over
25 three years; right?

1 DEP. COMM. LEWIS: Correct.

2 MR. NEVILLE: And had laid a great number of
3 charges, I guess a number of accused persons?

4 DEP. COMM. LEWIS: Right.

5 MR. NEVILLE: Had obtained statements from
6 complainants and supporting witnesses?

7 DEP. COMM. LEWIS: Correct.

8 MR. NEVILLE: And put charges before the
9 courts to be processed?

10 DEP. COMM. LEWIS: That's correct.

11 MR. NEVILLE: And this is a document sent by
12 Mr. Guzzo to the editor and published in the only local
13 newspaper, right?

14 DEP. COMM. LEWIS: Right.

15 MR. NEVILLE: And what he says here, as in
16 the October document to the House, if you look with me at
17 the bottom, the second-last paragraph:

18 "Either the first investigation..."

19 Which, stopping there, is Inspector Smith's
20 in 1994, right?

21 DEP. COMM. LEWIS: I would assume so, yes.

22 MR. NEVILLE: Which was left with, and he
23 quotes the famous "no stoned unturned" was incompetent or
24 there has been a major cover-up on the part of certain
25 police services; correct?

1 **DEP. COMM. LEWIS:** Right.

2 **MR. NEVILLE:** Look at the top of the next
3 page please, the third sentence -- second sentence, I
4 should say:

5 "I am concerned that if there has been
6 an incompetent investigation or if
7 there has been a cover-up that the
8 Ontario Provincial Police, which
9 operates in other jurisdictions across
10 this province, could be practicing the
11 same incompetence or the same behaviour
12 that resulted in this cover-up."

13 So here's a letter to the editor in the city
14 in which you're trying to get to the bottom of a so-called
15 mystery, and this is being said about your police force.

16 **DEP. COMM. LEWIS:** Correct.

17 **MR. NEVILLE:** With the suggestion, both in
18 the House document and in this document, that there was, at
19 the very best, incompetence or worse province-wide.

20 **DEP. COMM. LEWIS:** Right.

21 **MR. NEVILLE:** Did that seem helpful to the
22 success of Project Truth in this city?

23 **DEP. COMM. LEWIS:** It didn't seem helpful to
24 a lot of things.

25 **MR. NEVILLE:** Right.

1 **DEP. COMM. LEWIS:** As I said earlier in my
2 evidence, I was concerned that the impacts of these
3 allegations of incompetence would have in every
4 investigation and every occurrence we responded to right
5 across the province.

6 **MR. NEVILLE:** Exactly.
7 Let's look next at Exhibit 2903.

8 **DEP. COMM. LEWIS:** Yes, sir.

9 **MR. NEVILLE:** Do you have it there, Deputy?

10 **DEP. COMM. LEWIS:** I do.

11 **MR. NEVILLE:** The format of the document is
12 an email to a number of recipients, including yourself, but
13 what Ms. Mansell is actually doing is distributing yet
14 another document that's published in the local newspaper,
15 the Standard Freeholder.

16 **DEP. COMM. LEWIS:** She is, yes, just cut and
17 paste.

18 **MR. NEVILLE:** Exactly.

19 And we see the heading, again it's about Mr.
20 Guzzo. Now, you've been a police officer, as of now, 30
21 years?

22 **DEP. COMM. LEWIS:** Yes.

23 **MR. NEVILLE:** At the time of some of these
24 events you'd been a police officer for over 20.

25 **DEP. COMM. LEWIS:** Correct.

1 **MR. NEVILLE:** Correct? You've been involved
2 in, I'm sure, a great many major cases and trials.

3 **DEP. COMM. LEWIS:** I have.

4 **MR. NEVILLE:** Jury trials included?

5 **DEP. COMM. LEWIS:** Yes.

6 **MR. NEVILLE:** It's important that a jury
7 trial -- any trial, but a jury trial in a local community
8 be fair and unbiased.

9 **DEP. COMM. LEWIS:** Correct.

10 **MR. NEVILLE:** This man is a judge, or
11 formerly, a lawyer and a legislator. Let's look at what he
12 has to say as quoted to -- in this article by him. It's
13 about the seventh line down in quotation marks:

14 "I have met with a number of the
15 plaintiffs in this case over the past
16 44 months and I believe what they have
17 told me,' Guzzo said in a letter
18 written to Harris dated December 8th.

19 'I believe others who have repeated
20 similar stories but who do not wish to
21 come forward at this time. I also
22 believe that any judge and any jury
23 will accept the evidence of these
24 individuals'."

25 Have you ever seen a comment by that -- like

1 that by a person with the legal background of Mr. Guzzo?

2 **DEP. COMM. LEWIS:** I never have, no.

3 **MR. NEVILLE:** And among other things, the
4 Leduc trial was on the -- almost on the eve of commencing.
5 It was about a month away.

6 **DEP. COMM. LEWIS:** A month away, yes.

7 **MR. NEVILLE:** In this city.

8 **DEP. COMM. LEWIS:** Yes.

9 **MR. NEVILLE:** Right.

10 Can we next look at Exhibit 2910?

11 **DEP. COMM. LEWIS:** I have it.

12 **MR. NEVILLE:** This is an exchange of emails
13 between yourself and Inspector Hall?

14 **DEP. COMM. LEWIS:** It is, yes.

15 **MR. NEVILLE:** All right, and you reply to
16 his email where he identifies three or four topics of
17 concern or interest, and then your reply to him is again an
18 indication of your intention, if possible, to head toward
19 some kind of public statement through a press conference or
20 press release; correct?

21 **DEP. COMM. LEWIS:** Correct.

22 **MR. NEVILLE:** And I don't know if we've seen
23 this particular article, but -- and that's why it may be
24 unfair to test your memory like this, but in the second
25 sentence of your email, "The Sun article today" -- and

1 "today" of course would be the Sunday edition, I guess,
2 January 14th, '01 -- "was the last straw, in my view."

3 Do you have any independent recollection
4 now, Deputy Commissioner, of what that article was?

5 **DEP. COMM. LEWIS:** I don't, no.

6 **MR. NEVILLE:** I take it it was in the same
7 vein or the same kinds of themes that we've discussed from
8 other documents.

9 **DEP. COMM. LEWIS:** In all likelihood, yes.

10 **MR. NEVILLE:** All right. And this is just
11 under two months from your meeting that ended in his
12 apology for spreading misinformation and negative comments
13 -- untoward negative comments about your Force.

14 **DEP. COMM. LEWIS:** Correct.

15 **MR. NEVILLE:** Next sentence:

16 "Guzzo is back to bad-mouthing us and
17 saying things that are untrue and we
18 told him so."

19 **DEP. COMM. LEWIS:** Correct. We told him
20 what he was saying was inaccurate.

21 **MR. NEVILLE:** And I take it, although we
22 don't have the article, the reason you put it that way is
23 he was to some degree, given the text you've written here,
24 repeating some of the misinformation.

25 **DEP. COMM. LEWIS:** Correct.

1 **MR. NEVILLE:** Okay.

2 Let's look next, briefly, at Exhibit 1011.
3 Actually there's a series of exhibits, Commissioner, and
4 they're all together -- the first three, that is -- 1011,
5 12 and 13.

6 Is that book there for you?

7 **DEP. COMM. LEWIS:** I have it, yes, thank
8 you.

9 **MR. NEVILLE:** Okay.

10 Now, either at the time these events were
11 happening or in preparation for these proceedings -- you're
12 familiar with this material?

13 **DEP. COMM. LEWIS:** Yes.

14 **MR. NEVILLE:** These are the comments of Mr.
15 Guzzo about certain notorious -- so-called notorious movies
16 or tapes.

17 **DEP. COMM. LEWIS:** Exactly.

18 **MR. NEVILLE:** All right, and we've dealt
19 with Inspector Hall on that, but there's Mr. Guzzo's
20 comments that we won't go back into again in Exhibit 1011.

21 If we look then at Exhibit 1013 ---

22 **DEP. COMM. LEWIS:** Correct.

23 **MR. NEVILLE:** --- we see Mr. Hall seeking
24 the assistance of Mr. Guzzo in relation to who purportedly
25 has the movies.

1 DEP. COMM. LEWIS: That's correct.

2 MR. NEVILLE: Were you familiar with this
3 exchange and this issue at the time?

4 DEP. COMM. LEWIS: I wasn't then. I have
5 since reviewed it though.

6 MR. NEVILLE: Okay. And then we see
7 Mr. Guzzo's answer in Exhibit 1012 about that topic;
8 correct?

9 DEP. COMM. LEWIS: Yes.

10 MR. NEVILLE: All right.

11 Let's look at a new -- I believe it's a new
12 document, Commissioner. It's 701353.

13 THE COMMISSIONER: Thank you. Exhibit 2919
14 is an email from Nancy Mansell dated Wednesday, October
15 17th, addressed to Gwen Boniface and others.

16 --- EXHIBIT NO./PIÈCE NO. P-2919:

17 (701353) - E-mail from Nancy Mansell to
18 Chris Lewis re: Transcript Gary Guzzo
19 Question re Project Truth dated 17 Oct 01

20 MR. NEVILLE: Do you have it there, Deputy
21 Commissioner?

22 DEP. COMM. LEWIS: I do, yes.

23 MR. NEVILLE: All right.

24 You are one of the recipients of the
25 document?

1 **DEP. COMM. LEWIS:** That's correct.

2 **MR. NEVILLE:** And it's dated October 17th,
3 2001, so this is now about 11 months after your meeting
4 with Mr. Guzzo.

5 **DEP. COMM. LEWIS:** It is.

6 **MR. NEVILLE:** Several months after the
7 correspondence, the Hansard statement by Guzzo about the
8 tapes and the attempts of Mr. Hall to get to the bottom of
9 it; right?

10 **DEP. COMM. LEWIS:** Correct.

11 **MR. NEVILLE:** And we've heard from Inspector
12 Hall that as part of the meeting on November 22nd of
13 yourself and himself and Mr. Guzzo, and with Mr. Coburn
14 present, that one of the presentations Mr. Hall made -- he
15 brought the Occurrence Report, the Quit Claim document, the
16 property receipt, et cetera. He explained to Mr. Guzzo the
17 origin, nature and disposition of the famous tapes.

18 **DEP. COMM. LEWIS:** I remember the tapes
19 being discussed at that time.

20 **MR. NEVILLE:** Okay, so Mr. ---

21 **DEP. COMM. LEWIS:** I don't recall all the
22 details, however.

23 **MR. NEVILLE:** Right. But so Mr. Guzzo has
24 been given the collected evidence in the meeting. He then
25 makes the comments we see in the documents reviewed,

1 starting with Hansard.

2 DEP. COMM. LEWIS: Right.

3 MR. NEVILLE: Right? And let's see what
4 happens here on October 17th. Firstly, would you look at
5 the first paragraph for me?

6 DEP. COMM. LEWIS: Yes.

7 MR. NEVILLE: Just read it to yourself.

8 DEP. COMM. LEWIS: Just very quickly, I
9 don't see a date -- I see the date this was emailed to me.
10 I don't see ---

11 MR. NEVILLE: Right.

12 DEP. COMM. LEWIS: --- a date on where this
13 transcript came from.

14 MR. NEVILLE: It doesn't seem to have one on
15 it, Deputy Commissioner. I took it, given the date of the
16 transmission by Ms. Mansell and the importance, high, that
17 it's something recent.

18 DEP. COMM. LEWIS: Something recent, yes.

19 MR. NEVILLE: It's certainly something that
20 happened in '01 because you'll see in that first paragraph
21 it references the Leduc trial.

22 DEP. COMM. LEWIS: Right.

23 MR. NEVILLE: That is to say Mr. Leduc's
24 first trial, which we know was in the first couple of
25 months of '01; all right?

1 DEP. COMM. LEWIS: Right.

2 MR. NEVILLE: Now, have you read to yourself
3 the first paragraph?

4 DEP. COMM. LEWIS: Most of it, yes.

5 MR. NEVILLE: Are you aware ---

6 THE COMMISSIONER: Hang on, you keep asking
7 him questions. You don't let him finish reading it.

8 MR. NEVILLE: Oh, I'm sorry, Commissioner.
9 I just wanted to start with the first paragraph.

10 DEP. COMM. LEWIS: I read quick, sir, but
11 not quite ---

12 MR. NEVILLE: No, no.

13 DEP. COMM. LEWIS: --- that quick.

14 MR. NEVILLE: My apology.

15 DEP. COMM. LEWIS: No problem.

16 MR. NEVILLE: Take your time.

17 DEP. COMM. LEWIS: Yes.

18 MR. NEVILLE: Now, did you ever become
19 advised of some previously sealed OPP file being left open
20 for 24 hours and people rummaging through it?

21 DEP. COMM. LEWIS: No.

22 MR. NEVILLE: Let's look at the bottom, at
23 the last entry attributed to Mr. Guzzo. These are
24 questions he's putting in the legislature on the public
25 record to the Attorney General; right?

1 DEP. COMM. LEWIS: Correct.

2 MR. NEVILLE: You see Mr. Young is the
3 Attorney General?

4 DEP. COMM. LEWIS: Right.

5 MR. NEVILLE: I'm coming back to the
6 misinformation and back to the movies. In the third line:
7 "Even if in fact the alleged victims
8 went to the police and Crown attorney
9 25 and 20 years ago and were rebuked by
10 the people in the Crown attorney's
11 office and the police department at
12 that time..."

13 Stopping there; did you ever become apprised
14 of any such thing happening?

15 DEP. COMM. LEWIS: No, I did not.

16 MR. NEVILLE: Next:
17 "But we also know that some of the
18 corroborative evidence that is
19 necessary was destroyed. The films
20 that would provide the corroborative
21 evidence were destroyed. They were
22 illegally seized. They were not
23 returned to their appropriate owners
24 and they were illegally destroyed."

25 That's the same topic; the one that he had

1 been briefed on by Inspector Hall; the one that he failed
2 to provide anything with the correspondence we reviewed,
3 and he's repeating it again here as late as October of
4 2001.

5 **DEP. COMM. LEWIS:** Correct.

6 **MR. NEVILLE:** Can we look at one final
7 document, 2912?

8 **DEP. COMM. LEWIS:** Yes, sir.

9 **MR. NEVILLE:** Mr. Horn earlier this morning
10 asked you questions about your visit to Mr. Guzzo who was
11 bringing forward this private members bill for an inquiry
12 and suggested that maybe the visit had some untoward
13 element to it, maybe even some aspect of intimidation.
14 Remember those questions?

15 **DEP. COMM. LEWIS:** That's correct.

16 **MR. NEVILLE:** Would you please look at this
17 document for me? It's an email by you to a number of
18 persons on the 14th of January again, with a response to you
19 from a Superintendent Sweeney.

20 **DEP. COMM. LEWIS:** That's right.

21 **MR. NEVILLE:** All right.

22 Would you just read out -- on page 1 of your
23 email, would you just read out for us the last paragraph
24 starting with "We then need to be prepared"? Read it out
25 for us.

1 **DEP. COMM. LEWIS:** "We then need to be
2 prepared to answer the likely questions
3 around Guzzo's allegations, all of
4 which we can answer, and we can
5 publicly state that we have nothing to
6 fear from a public inquiry as we've
7 conducted an extremely thorough
8 investigation, et cetera."

9 **MR. NEVILLE:** That was your position?

10 **DEP. COMM. LEWIS:** It was.

11 **MR. NEVILLE:** Was that position conveyed to
12 Mr. Guzzo?

13 **DEP. COMM. LEWIS:** It was.

14 **MR. NEVILLE:** Thank you. Those are my
15 questions.

16 **THE COMMISSIONER:** Mr. Chisholm?

17 **MR. CHISHOLM:** No questions, sir

18 **THE COMMISSIONER:** Thank you.

19 Ms. McIntosh?

20 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MS.

21 **McINTOSH:**

22 **MS. McINTOSH:** Hello, Deputy Commissioner.
23 My name is Leslie McIntosh and I act for the Ministry of
24 the Attorney General.

25 **DEP. COMM. LEWIS:** Good morning.

1 **MS. McINTOSH:** And I just have a few
2 questions for you, starting with some questions about the
3 outstanding Project Truth briefs.

4 **DEP. COMM. LEWIS:** Correct, yes.

5 **MS. McINTOSH:** I wanted to know what you
6 knew about the briefs. Did you know that there were five
7 briefs alleging historical sexual abuse?

8 **DEP. COMM. LEWIS:** I knew there was five
9 briefs and I believe one was in relation to the alleged
10 conspiracy.

11 **MS. McINTOSH:** Okay. I think -- that's what
12 I'm asking you, whether you knew there were five dealing
13 with historical sexual assaults or abuse and then one
14 dealing with the conspiracy. So there were six outstanding
15 briefs?

16 **DEP. COMM. LEWIS:** I had thought four and
17 one, but ---

18 **MS. McINTOSH:** Okay.

19 **DEP. COMM. LEWIS:** In that general area,
20 yes.

21 **MS. McINTOSH:** Right.

22 And did you know that a fellow named Ron
23 Leroux was the complainant in four of the five historical
24 sexual abuse cases?

25 **DEP. COMM. LEWIS:** I don't recall that I was

1 aware of that.

2 **MS. McINTOSH:** All right. So you wouldn't
3 have been aware that he was also sort of one of the chief
4 complainants in the conspiracy brief as well?

5 **DEP. COMM. LEWIS:** I didn't know that
6 either, no.

7 **MS. McINTOSH:** All right.

8 And you know that Shelley Hallett got the
9 historical sexual abuse briefs in -- would it be fair to
10 say late 1999?

11 **DEP. COMM. LEWIS:** I thought it was August,
12 1999, but I stand to be corrected.

13 **MS. McINTOSH:** Okay. I thought it was
14 September and then one in November '99.

15 **DEP. COMM. LEWIS:** And you could be right.
16 I don't know the dates off the top of my head.

17 **MS. McINTOSH:** All right. Okay.

18 And then the conspiracy brief though, she
19 didn't get that until July of 2000. Did you know that?

20 **DEP. COMM. LEWIS:** I didn't know that. I
21 may have at the time, ma'am, but I don't remember.

22 **MS. McINTOSH:** All right.

23 And the historical sexual assaults briefs
24 comprise 12 volumes. Did you know the volume of ---

25 **DEP. COMM. LEWIS:** I didn't now that either,

1 no.

2 **MS. McINTOSH:** And the conspiracy brief was
3 nine volumes?

4 **DEP. COMM. LEWIS:** Didn't know that.

5 **MS. McINTOSH:** And did you know that Shelley
6 Hallett wanted to review the conspiracy brief before she
7 rendered an opinion on the historical sexual abuse cases?

8 **DEP. COMM. LEWIS:** No, I did not know that.

9 **MS. McINTOSH:** Well, do you think that that
10 would be a good idea or would make sense, you know, given
11 that the conspiracy brief might inform her opinion on the
12 first five?

13 **DEP. COMM. LEWIS:** I really can't even pass
14 comment on that. I'm not familiar with what was in any of
15 them.

16 **MS. McINTOSH:** Okay. If there were -- if,
17 as I suggest, the same complainant was, you know, key in
18 most of those briefs, would you think in that situation it
19 would make sense for her to want to look at all the briefs
20 together before she rendered an opinion on one or another?

21 **DEP. COMM. LEWIS:** Once again, not knowing
22 what was being said I have to trust her judgment on that.
23 I don't know.

24 **MS. McINTOSH:** Okay, thanks.

25 Now, I wanted to ask you some questions

1 about your conversation with Murray Segal on January 15th,
2 2001.

3 And perhaps, Madam Registrar, we could turn
4 up the Deputy Commissioner's notes so that he has them in
5 front of him there. It's Exhibit 2899 and it's Bates page
6 673.

7 **THE COMMISSIONER:** That should be in your
8 books.

9 **DEP. COMM. LEWIS:** It is, yes.

10 The Bates number again, please?

11 **MS. McINTOSH:** Six-seven-three (673). It's
12 148, I guess, of your own handwritten note.

13 **DEP. COMM. LEWIS:** Six-seven-three (673),
14 yes, I have it here.

15 **MS. McINTOSH:** Okay.

16 So your notes say -- I take it that under
17 the entry "10:30, Murray Segal, Project Truth", you've
18 written:

19 "Reluctant to speak to Shelley Hallett
20 about the timing of her review given
21 she's in court in a trial."

22 So let me pause there. So is that what
23 you're saying Murray Segal said to you?

24 **DEP. COMM. LEWIS:** He did say that, yes.

25 **MS. McINTOSH:** All right.

1 DEP. COMM. LEWIS: He said more that I did
2 not write down.

3 MS. McINTOSH: Okay.

4 And then Murray apologized for the delay.
5 Is that correct?

6 DEP. COMM. LEWIS: He did, yes.

7 MS. McINTOSH: And he expressed ---

8 DEP. COMM. LEWIS: I expressed.

9 MS. McINTOSH: Is this you expressing your
10 concerns about the OPP being beaten up in the media. Is
11 that ---

12 DEP. COMM. LEWIS: That's correct, that was
13 me.

14 MS. McINTOSH: And then again is this --
15 again:

16 "Murray concerned about saying anything
17 in the midst of a jury trial and
18 reluctant to pull the file from her in
19 the midst of a jury trial."

20 DEP. COMM. LEWIS: That's correct, yes.

21 MS. McINTOSH: That's Murray?

22 DEP. COMM. LEWIS: That's what Murray said
23 to me, yes.

24 MS. McINTOSH: Okay, thank you.

25 And am I understanding correctly that what

1 he was saying to you, what you understood, was that he did
2 not want to ask her to review these briefs during the
3 course of the trial; that would be too much work to do?

4 **DEP. COMM. LEWIS:** That's true and, once
5 again, my sense was and my memory of this conversation
6 right from then till today, is that basically -- and I
7 don't remember his words, she had a lot on her plate.

8 **MS. McINTOSH:** Okay.

9 **DEP. COMM. LEWIS:** And I always thought this
10 trial, the review of those binders and/or briefs and what
11 else I didn't know in terms of other cases she had on the
12 go and that my own worry or stress that yanking these
13 briefs from her in the middle of all this, might cause her
14 some stress or concerns. So that was -- that's my memory
15 of the conversation.

16 **MS. McINTOSH:** All right.

17 So you don't remember Murray Segal using the
18 word "stress"?

19 **DEP. COMM. LEWIS:** I don't know if he used
20 it or not. That's just my recollection of the gist of what
21 he did say.

22 **MS. McINTOSH:** All right.

23 And I think you've confirmed to Ms. Daley
24 that Mr. Segal did not use the words to you, "Shelley
25 Hallett has emotional problems"?

1 **DEP. COMM. LEWIS:** I don't recall him using
2 those words.

3 **MS. McINTOSH:** All right.

4 **DEP. COMM. LEWIS:** I can't say for sure he
5 didn't but that doesn't stick out in my mind as something
6 he said.

7 **MS. McINTOSH:** Well, if he'd told you that a
8 Crown Attorney who was prosecuting a major trial had
9 emotional problems, I would expect that you would have
10 insisted that the briefs go to someone else or that someone
11 else conduct that trial. I mean, it seems extraordinary
12 that you wouldn't have made a note of that.

13 **DEP. COMM. LEWIS:** That's a valid thought,
14 yes.

15 **MS. McINTOSH:** All right.

16 And when -- I presume that you reported your
17 conversation with Murray Segal to Pat Hall. Is that
18 correct?

19 **DEP. COMM. LEWIS:** I would assume so, yes.
20 That would make total sense that Pat was kept up-to-speed
21 on my conversations with the Crowns.

22 **MS. McINTOSH:** All right. And when you
23 reported your conversation with Murray Segal to Pat Hall,
24 did you say to Pat Hall, "Shelley Hallett has emotional
25 problems"?

1 **DEP. COMM. LEWIS:** I don't remember saying
2 those words to Pat Hall. I know Pat has said that I used
3 that word and I'm certainly not calling Pat a liar in any
4 way, shape or form, I just don't recall saying that.
5 Whether that's something he surmised by my comments around
6 stress or a lot on her plate, I don't know. And I won't
7 deny that I said it either. I just don't recall saying
8 those words.

9 **MS. McINTOSH:** All right. So it might have
10 just been Mr. Hall's interpretation of your account of that
11 conversation. Is that what you're saying?

12 **DEP. COMM. LEWIS:** Yes, that may well be.

13 **MS. McINTOSH:** All right.

14 And I wanted to touch on the protocol of
15 submitting of the Project Truth briefs to the Criminal Law
16 Division before charging in this situation.

17 I take it you inherited that protocol and
18 you were not part of the discussion about the reasons
19 around why that was decided.

20 **DEP. COMM. LEWIS:** Definitely. That
21 protocol had been agreed to some years prior to me in that
22 role.

23 **MS. McINTOSH:** All right.

24 And would you agree with me, Deputy
25 Commissioner, that there are in fact two aspects to forming

1 reasonable and probable grounds. There's a subjective
2 aspect and an objective aspect. Is that your
3 understanding?

4 **DEP. COMM. LEWIS:** That's true, yes.

5 **MS. McINTOSH:** All right.

6 It's the subjective aspect that requires the
7 officer who is going to lay the charge to have an honest
8 belief that there are reasonable and probable grounds to
9 charge. Is that correct?

10 **DEP. COMM. LEWIS:** True. I would like to
11 think the officers would have an objective view as well as
12 a subjective view.

13 **MS. McINTOSH:** Well, that's the second part,
14 and I was going to suggest to you that the objective part
15 of it is an assessment of whether there's sufficient
16 credible evidence on each element of the offence to support
17 a charge. Would that be a fair description of the
18 objective side of reasonable and probable grounds?

19 **DEP. COMM. LEWIS:** Could you repeat that,
20 please, ma'am? Could you repeat that for me?

21 **MS. McINTOSH:** Yes. What I'm suggesting is
22 that an objective assessment of reasonable and probable
23 grounds requires sufficient credible evidence on each
24 element of the offence to support a charge.

25 **DEP. COMM. LEWIS:** That makes sense, yes.

1 **MS. McINTOSH:** All right. And both -- the
2 officer has to have both. They have to have -- they have
3 to make the object of assessment and then they have to have
4 a subjective -- honest subjective belief. Is that fair to
5 say?

6 **DEP. COMM. LEWIS:** That is fair to say.

7 **MS. McINTOSH:** Right. And would you agree
8 with me that the elements here -- the elements of the
9 offences here could be tricky because of the changes in the
10 *Criminal Code* and the long lapse in time between the
11 offences and the charges?

12 **DEP. COMM. LEWIS:** Certainly some of the
13 legal issues around that in terms of juvenile -- or some of
14 the Acts that would have been in play at the time of the
15 offences, and all the changes in legislation right through
16 to that time period, could have been tricky and
17 challenging.

18 And I apologize because I was thinking too
19 hard as you asked the question. If you could ask it one
20 more time, just to make sure I'm answering the right
21 question?

22 **MS. McINTOSH:** Well, really I think you did
23 answer the right question, and flowing from that I just
24 wanted to suggest to you, because of the difficulty with
25 the changes in the law and so on, that it was a good idea

1 to have the Criminal Law Division advised with respect to
2 the object of requirements of reasonable and probable
3 grounds.

4 **DEP. COMM. LEWIS:** Well, certainly if there
5 were grey areas that the investigators themselves -- Pat
6 Hall had been around for that entire period and all that
7 law -- legislative change as well. If there was issues,
8 certainly those could be something discussed with the Crown
9 without putting the whole brief into the Crown's hands for
10 decisions on whether or not R&PG exists.

11 But that would be good dialogue to have.
12 Whether or not that approach of turning it all over to the
13 Crown to make those decisions is the right decision, I
14 don't know. I don't know that's something that I would
15 have wanted to agree with if I was in that position when
16 the agreement was made.

17 **MS. McINTOSH:** Okay. But the rule wasn't
18 absolute, as I understand it. If the officer felt that
19 they could make that RPG assessment and if they had, for
20 example, a concern about pre-charge delay or risk to the
21 public, they could go ahead and lay the charge, and in fact
22 that happened in at least one of these cases. Is that your
23 understanding?

24 **DEP. COMM. LEWIS:** I wasn't aware that that
25 had happened.

1 **MS. McINTOSH:** All right.

2 But here, in the case of these outstanding
3 briefs that we've been discussing, the concern wasn't pre-
4 charge delay or risk to the public, as I understand it.
5 Indeed charges weren't contemplated or recommended by the
6 police. Is that correct?

7 **DEP. COMM. LEWIS:** And I do recall learning
8 that. I don't recall knowing that at that time.

9 **MS. McINTOSH:** Okay, all right, but ---

10 **DEP. COMM. LEWIS:** I may well have had that
11 discussion with Pat at the time. I just don't recall ---

12 **MS. McINTOSH:** Okay. I mean I don't ---

13 **DEP. COMM. LEWIS:** --- eight years later.
14 Yes?

15 **MS. McINTOSH:** Sorry to interrupt you.

16 **DEP. COMM. LEWIS:** No, I was going to say I
17 don't recall eight years later what exactly I knew then
18 versus what I learned over the eight years since.

19 **MS. McINTOSH:** Yeah. Well, I don't see
20 anything in the email exchanges about concern about pre-
21 charge delay or concern about risk to the public. Is that
22 fair?

23 **DEP. COMM. LEWIS:** I haven't seen any of
24 that either.

25 **MS. McINTOSH:** All right.

1 And so the concern here was again with, you
2 know, information going out to the victims and the accused,
3 and understandably with what you considered unjustified
4 criticisms of the OPP in -- by Mr. Guzzo and the media. Is
5 that correct?

6 **DEP. COMM. LEWIS:** Yeah, a total public that
7 was misinformed, and all elements of the public, and as
8 well misinformed about the facts and misinformed about the
9 competence of the OPP.

10 **MS. McINTOSH:** Those are my questions.
11 Thank you.

12 **THE COMMISSIONER:** Thank you. Let's get
13 some idea -- Ms. Robitaille, do you have -- Ms. Robitaille
14 not there? Good, okay.

15 Ms. Levesque, will you have any questions?

16 **MS. LEVESQUE:** No questions.

17 **THE COMMISSIONER:** All right.

18 Ms. Lalji, do you have any questions?

19 **MS. LALJI:** Only about 10 or 15 minutes.

20 **THE COMMISSIONER:** And Ms. Brannan, how long
21 do you think you're going to be?

22 **MS. SACCOCCIO BRANNAN:** At this point in
23 time, Mr. Commissioner, I don't have any questions.

24 **THE COMMISSIONER:** Okay.

25 **MS. SACCOCCIO BRANNAN:** I haven't heard from

1 Ms. Lalji yet, though.

2 **THE COMMISSIONER:** Oh okay, I see what
3 you're saying. No, no; I understand. Hold on.

4 Mr. Carroll?

5 **MR. CARROLL:** Two minutes.

6 **THE COMMISSIONER:** All right. So let's
7 finish up right after lunch and we can -- we'll have you on
8 your way this afternoon, sir.

9 **DEP. COMM. LEWIS:** Thank you.

10 **THE COMMISSIONER:** Thank you.

11 **THE REGISTRAR:** Order; all rise. À l'ordre;
12 veuillez vous lever.

13 This hearing will resume at 2:00 p.m.

14 --- Upon recessing at 12:26 p.m./

15 L'audience est suspendue à 12h26

16 --- Upon resuming at 2:02 p.m./

17 L'audience est reprise à 14h02

18 **THE REGISTRAR:** Order; all rise. À l'ordre;
19 veuillez vous lever.

20 This hearing is now resumed. Please be
21 seated. Veuillez vous asseoir.

22 **THE COMMISSIONER:** Thank you. Ms. Lalji.

23 **MS. LALJI:** Good afternoon.

24 **THE COMMISSIONER:** Good afternoon.

25 **CHRISTOPHER LEWIS, Resumed/Sous le même serment:**

1 --- CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR

2 MS. LALJI:

3 MS. LALJI: Good afternoon, Deputy
4 Commissioner.

5 DEP. COMM. LEWIS: Good afternoon.

6 MS. LALJI: You and I have met before. My
7 name is Reena Lalji. I'm counsel for the Cornwall Police
8 Service.

9 DEP. COMM. LEWIS: Yes.

10 MS. LALJI: I'd just like to cover a few
11 areas with you. Now, Pat Hall had testified that after the
12 OPP had investigated the Cornwall Police, he agreed -- and
13 I'm just going to give you the quote to which he agreed to:

14 "There was not one iota of evidence
15 that the Cornwall Police were anything
16 other than professional, competent, or
17 of integrity and doing their best."

18 I take it that would be consistent with your
19 view regarding the Cornwall Police.

20 DEP. COMM. LEWIS: I worked closely with the
21 Cornwall Police from '93 -- 1993 off and on, and still have
22 some contact at times to this day, and I would say that
23 statement by Inspector Hall is totally accurate.

24 MS. LALJI: Now, Deputy Commissioner, do you
25 know former Acting Chief Carl Johnston?

1 **DEP. COMM. LEWIS:** I was here working on the
2 taskforce when the Acting Chief Carl Johnston came and I
3 knew him prior in a number of different chiefs' roles in
4 this province.

5 **MS. LALJI:** And in the regard I assume that
6 you would have been aware that before he came to the
7 Cornwall Police Service that he was the Chief of Police in
8 Tillsonburg and in Collingwood.

9 **DEP. COMM. LEWIS:** I believe he was the
10 Chief of Police in Chatham, St. Thomas, and Collingwood.

11 **MS. LALJI:** Okay. And I assume also that
12 you would have been aware that he was an Assistant Deputy
13 Minister in the Solicitor General's Office as well.

14 **DEP. COMM. LEWIS:** He was, yes.

15 **MS. LALJI:** Would you agree with me that he
16 was an experienced police chief?

17 **DEP. COMM. LEWIS:** He was probably at that
18 time the most experienced police chief in the Province of
19 Ontario.

20 **MS. LALJI:** And Deputy Commissioner, what
21 was Carl Johnston's reputation in the policing community?

22 **DEP. COMM. LEWIS:** He was, and remains, very
23 well thought of as a police chief, a true gentleman, very
24 professional, very experienced, of very, very high
25 integrity.

1 **MS. LALJI:** And would you say that his
2 reputation also would have included honesty as well?

3 **DEP. COMM. LEWIS:** Oh, without a doubt.

4 **MS. LALJI:** And are your views consistent
5 with his reputation?

6 **DEP. COMM. LEWIS:** I believe so.

7 **MS. LALJI:** Now, you testified yesterday
8 that you were on a joint forces operation and had worked
9 closely with the Cornwall police and the RCMP from 1993 to
10 1995; do you recall that?

11 **DEP. COMM. LEWIS:** That's correct.

12 **MS. LALJI:** And your view is that all of the
13 officers worked co-operatively; would that be fair?

14 **DEP. COMM. LEWIS:** Yes. We had a very good
15 working relationship with the Cornwall police, and the OPP,
16 and the RMCP and Canada Customs at the time. There was the
17 four agencies involved.

18 Some of the Cornwall police officers worked
19 directly for me on the taskforce as part of the joint
20 forces operation, and I met regularly with senior officers
21 from the police department through those years, and many
22 times since in different roles.

23 **MS. LALJI:** Okay. And this joint forces
24 operation that you had talked about yesterday, that was to
25 deal with the smuggling issues and, in particular, tobacco

1 smuggling across the border; would that be fair?

2 **DEP. COMM. LEWIS:** It was fair. The
3 mandate, really, was to deal with the issues in contraband
4 smuggling, and the related criminal activity along the St.
5 Lawrence corridor.

6 **MS. LALJI:** And that's actually what my next
7 question was. I wanted to touch upon the fact that
8 smuggling does, indeed, have collateral effects of a
9 criminal nature, such as organized crime, robberies, and
10 other related crimes that the joint operations force would
11 have had to have dealt with; would that be fair?

12 **DEP. COMM. LEWIS:** Without a doubt, and I
13 mean, related crimes from boat thefts to robberies and other
14 things.

15 Ultimately organized crime was drawn to this
16 area, through those years, and still is. In order
17 to -- excuse me -- in conjunction with the smuggling
18 activity, other criminal activities can occur that drew
19 organized crime to the area because of the profits to be
20 made.

21 **MS. LALJI:** Okay, and I just want to make
22 sure that I did hear you correctly in that answer, that the
23 smuggling activity and related criminal activity actually
24 does continue until today? It wasn't only in the 1990s,
25 but there is still some smuggling activity that does

1 continue today around the Cornwall area?

2 **DEP. COMM. LEWIS:** And there has, without a
3 doubt, since '93 and that time period.

4 When it was at a peak, until now -- and
5 there's been peaks along the way, peaks and valleys of the
6 activity, depending on a number of factors, but it still
7 does continue right to this minute.

8 **MS. LALJI:** And you would agree with me that
9 all of these issues create further policing issues for
10 Cornwall that are somewhat different when you compare
11 Cornwall to other similarly-sized communities in Ontario
12 that are not necessarily close to a border?

13 **DEP. COMM. LEWIS:** For sure. This is a very
14 unique piece of geography here, with the New York State,
15 Akwesasne, Quebec and Ontario borders, all kind of meeting
16 in one spot.

17 It creates a host of problems and, of
18 course, the related criminal activities ultimately end up
19 centred a lot in the Cornwall area. The surrounding area
20 as well, in OPP jurisdictions, but the City of Cornwall
21 certainly got more than its share of that type of activity
22 as a result.

23 **MS. LALJI:** And so would it be fair to say
24 that, as a result of all of that, the police in these areas
25 had a heavy workload?

1 **DEP. COMM. LEWIS:** For sure.

2 **MS. LALJI:** And they were taxed in the
3 amount of work that they had to do?

4 **DEP. COMM. LEWIS:** In '93 to '95, without a
5 doubt they were extremely taxed.

6 **MS. LALJI:** Now, just turning to this area
7 of heavy workloads for the police; you had testified
8 yesterday that the OPP now had about 2,000 more staff than
9 it did in the 1990s. Do you recall that?

10 **DEP. COMM. LEWIS:** That's correct.

11 **MS. LALJI:** And that the provincial
12 government had given the OPP more investigative units as
13 well?

14 **DEP. COMM. LEWIS:** That's correct.

15 **MS. LALJI:** Now, this would be because there
16 was a realization in the 1990s that the police were very
17 busy, and they did need more people to get their
18 investigations done? That would be fair?

19 **DEP. COMM. LEWIS:** In part. In relation to
20 the -- the organized crime units and special investigative
21 units that we got as part of that 2,000 over those years,
22 that was in part because of criminal activity in our area,
23 and to assist other organizations and other police
24 services, as the Provincial police.

25 But the largest piece of the 2,000 came from

1 contract policing arrangements where we actually took over
2 smaller police departments and they amalgamated into the
3 OPP, so, therefore, we took over their jurisdiction as well
4 as their people, so that's part of the expansion as well.

5 **MS. LALJI:** Right, and the other part was
6 also just having to deal with the heavy workload, as well?

7 **DEP. COMM. LEWIS:** For sure.

8 **MS. LALJI:** Now, in Randy Millar's
9 situation, where there was a delay in the Jean-Luc Leblanc
10 investigation, this was because the detachment that he was
11 in was very busy? That would be fair?

12 **DEP. COMM. LEWIS:** It was, particularly the
13 crime unit that Randy was ultimately in charge of.

14 I think I testified yesterday, they had four
15 homicides, two attempts, and several other significant
16 investigations on the go in a unit that only had 10 people.
17 So, when you do the math, ultimately Randy was hard-pressed
18 to find detectives to do the work he needed done.

19 **MS. LALJI:** So, it seems to me that the
20 delay in at least that investigation, and perhaps there may
21 be others, it was a resource issue because they were very
22 busy?

23 **DEP. COMM. LEWIS:** Well, they were, and
24 you -- you just can't do everything you need to do in a
25 day, in any police agency, and so you end up prioritizing

1 in terms of what's the main issue we need to deal with
2 right now?

3 If you're on the way to a break and enter
4 call, and a murder comes in, you leave the break and enter
5 and you go to the murder -- not that the break and enter is
6 any less significant to the people whose home is being
7 broken into, but you can only do so much.

8 So you do have to prioritize, and that's a
9 bit of a shell game at times, and it's just the reality of
10 policing. You can never staff any police organization to
11 meet the peaks 24/7. And you don't want to staff to meet
12 the valleys, so you staff somewhere in between and you hope
13 for the best in terms of being able to move resources
14 around to deal with the peaks, and sometimes you just don't
15 have enough to do it.

16 But you can't expect the taxpayers to ever
17 pay to police the peaks all the time, because that just
18 wouldn't be realistic.

19 **MS. LALJI:** And, you know -- and I agree
20 with you and that seems to be fair to me, so in a
21 situations where you don't have enough policing resources
22 it would obviously cause some delays in investigations;
23 that's just a reality of the situation?

24 **DEP. COMM. LEWIS:** It is. It's not always
25 understood by the public, and I understand that.

1 If your bicycle is stolen, it's pretty tough
2 to accept the fact that the police are busy dealing with a
3 robbery somewhere and don't get to your stolen bicycle
4 because it's so important to you, but that is reality, and
5 it happens 24 hours a day in every police department in the
6 world.

7 **MS. LALJI:** Now, I have another question for
8 you, and it's going to be a little bit long so I'm going to
9 break it down.

10 Now, if you have a situation where you have
11 a particular police service or a detachment that's very
12 busy, and the officers are working very hard to get their
13 investigations completed, and the officers are essentially
14 in a situation of playing catch-up with their
15 investigations because of the amount of crime in the area,
16 would you agree with me that being overworked like that
17 could possibly have an impact on the morale of an
18 organization?

19 **DEP. COMM. LEWIS:** It does, for sure. I did
20 a study on morale and policing, Eastern Region, in 2001,
21 and I found that morale was affected largely by three
22 things -- if you bear with me just for one minute.

23 **MS. LALJI:** Sure.

24 **DEP. COMM. LEWIS:** One of them, and the
25 biggest one, was staffing. If you're short-handed and

1 there's not enough people and you're always playing catch-
2 up and you just never seem to get a firm grip on your
3 workload, it's going to affect your morale. And the second
4 one is facilities, like buildings and cars, and the third
5 one is leadership.

6 And even with all those things, sometimes
7 without proper leadership you can't keep morale high, but
8 it is certainly is combination of those three things that
9 ultimately affect morale, either positively or negatively.

10 **MS. LALJI:** Thank you. Now, I just want to
11 switch gears a little bit.

12 In terms of Justice Campbell's report on the
13 Paul Bernardo investigation, you testified that this report
14 had a significant impact on policing?

15 **DEP. COMM. LEWIS:** It did.

16 **MS. LALJI:** And policing standards changed
17 significantly as a result of that report?

18 **DEP. COMM. LEWIS:** They did.

19 **MS. LALJI:** And you would agree with me that
20 the way the police in Ontario now conduct investigations
21 has also changed as a result of that report's
22 recommendations?

23 **DEP. COMM. LEWIS:** Definitely.

24 **MS. LALJI:** You testified yesterday that
25 when you met with Mr. Guzzo it was for the purpose of

1 letting him know that the information that he was provided
2 with, and that he was also in turn disseminating was
3 actually misinformation?

4 **DEP. COMM. LEWIS:** That's correct.

5 **MS. LALJI:** And what he was fueling, in
6 essence, was rumour and innuendo? Would that be a fair way
7 of characterizing what he was revealing out to the public?

8 **DEP. COMM. LEWIS:** I don't know where he was
9 getting the information, so I couldn't say it was rumour
10 and innuendo. My sense always was, right or wrong, that he
11 was being fed misinformation by somebody ---

12 **MS. LALJI:** So at the ---

13 **DEP. COMM. LEWIS:** --- and in turn passing
14 that on.

15 **MS. LALJI:** Right.

16 **DEP. COMM. LEWIS:** But I don't know the
17 source of it.

18 **MS. LALJI:** Fair enough. And, at the very
19 least, you knew it was misinformation and that's why you
20 had met with him?

21 **DEP. COMM. LEWIS:** That's correct.

22 **MS. LALJI:** And in terms of laying charges,
23 officers would require RPG before they can do that?

24 **DEP. COMM. LEWIS:** Yes.

25 **MS. LALJI:** And you wouldn't be able to lay

1 charges based solely on rumour and innuendo, would you, as
2 a police officer?

3 **DEP. COMM. LEWIS:** No.

4 **MS. LALJI:** And you would also need a
5 complainant in a sexual abuse case, to actually do an
6 investigation; that would be fair?

7 **DEP. COMM. LEWIS:** Well, you could conduct
8 an investigation, based on an unknown victim, but you would
9 have a complainant.

10 **MS. LALJI:** Right, so ---

11 **DEP. COMM. LEWIS:** I mean, the complainant
12 may not be the victim, but someone could say, "I saw a
13 person attacked and assaulted;" you would start the
14 investigation. You may not ever find the actual victim,
15 but you could still have a complainant.

16 **MS. LALJI:** Okay, so let's just look in
17 terms of an historical sexual assault situation.

18 **DEP. COMM. LEWIS:** Right.

19 **MS. LALJI:** Okay? In that kind of
20 situation, you would still require a complainant to
21 actually do any investigation?

22 **DEP. COMM. LEWIS:** Well, someone would have
23 to tell you that something happened in order for you to
24 enter into an investigation.

25 **MS. LALJI:** Now, you testified yesterday

1 about changes in how the police deal with media. Do you
2 recall that ---

3 DEP. COMM. LEWIS: Yes.

4 MS. LALJI: --- and a little bit today as
5 well?

6 DEP. COMM. LEWIS: Yes.

7 MS. LALJI: And, specifically, you had said
8 that throughout the 1990s the OPP only spoke to the media
9 if they had to, and then they would only share as little
10 information as possible. Do you recall that?

11 DEP. COMM. LEWIS: Yes. And that doesn't
12 say that all people in the OPP did that. That was a
13 general trend, in policing in general -- probably, really,
14 throughout North America, that the media were the enemy,
15 you told them what you had to, only to keep them off your
16 back.

17 MS. LALJI: Right.

18 DEP. COMM. LEWIS: And I'm not saying that
19 was right, but that was the general trend. There was lots
20 of officers who didn't do it that way, but the mind set and
21 the mind shift today is the predominant number of officers
22 should be thinking I can provide all I can, except in
23 certain circumstances which I outlined yesterday. So it's
24 just a shift of the predominant group. You can never say
25 all are doing -- were doing one back then or the other now.

1 **MS. LALJI:** Absolutely. And like you had
2 said, generally the trend was, in policing back then in the
3 1990s, to really share very little as possible. Again,
4 like you said, not everyone did that but that was the
5 general trend in policing ---

6 **DEP. COMM. LEWIS:** It was the general trend.

7 **MS. LALJI:** --- at that time.

8 **DEP. COMM. LEWIS:** Yes.

9 **MS. LALJI:** And of course that has changed
10 now, as you've indicated.

11 **DEP. COMM. LEWIS:** Yes.

12 **MS. LALJI:** Now, in terms of the way the
13 trend was back then in the 1990s, you'd agree with me that
14 it's not a matter of trying to hide anything from the
15 public but it was typically because a matter was a subject
16 of investigation or possibly prosecution before the courts
17 and so the police did not feel free to comment on those
18 matters until they were concluded. Would that be fair?

19 **DEP. COMM. LEWIS:** Well, that was in part
20 the problem, you didn't want to do anything to jeopardize
21 an investigation nor jeopardize the judicial process.

22 There was other issues, sometimes it was
23 just personality. As I said yesterday, we're human beings
24 and some personalities were, "I don't trust the media, I
25 don't want to talk to them." And some officers didn't

1 understand the broader picture in terms of victims and
2 witnesses and suspects knowing what the police are doing
3 and the general need for us to tell the public what was
4 going on to alleviate fear and misconceptions and
5 perceptions. Not everybody understood that.

6 So sometimes there wasn't necessarily a will
7 to not tell the media things for any heinous reasons, it
8 was just a lack of understanding, education. And we've
9 changed a lot of that by preaching to our people that this
10 is why we have to do it and here's how to do it and this is
11 what we expect of you. So it's shifted that whole mindset.

12 **MS. LALJI:** Absolutely. And I wouldn't for
13 one instance mean to indicate that it was for any untoward
14 reason for not sharing, it was just, again, that was the
15 mindset for all the reasons you just identified.

16 **DEP. COMM. LEWIS:** Right.

17 **MS. LALJI:** Now, administrative reviews
18 where a police service is investigating itself, either
19 through its Professional Standards or by an outside police
20 force, information on those types of administrative reviews
21 in particular, again, back in the 1990s it would be fair to
22 say that those types of -- you know, that kind of
23 information also perhaps may not be shared with the media
24 as well, for the reasons you had also just identified.

25 **DEP. COMM. LEWIS:** Without a doubt. The

1 tendency back in those days was not to share that type of
2 information with the media.

3 Now, some of those hearings, if it got to a
4 *Police Services Act* hearing as opposed to just some
5 investigation and some non-disciplinary action, but if it
6 got to a hearing it was a public venue so the media could
7 attend.

8 **MS. LALJI:** Right.

9 **DEP. COMM. LEWIS:** We didn't always tell
10 them when it was occurring but if the media heard about it
11 they could attend. But it wasn't something we would
12 release to say we've disciplined an officer. I mean,
13 there's privacy rights about some of that stuff too that
14 would prevent us from doing it and other times we just
15 didn't do it.

16 **MS. LALJI:** Right. So if a police service
17 didn't share all aspects of an administrative review or an
18 investigation with the media in the 1990s, like you said,
19 that would not be unusual, would it?

20 **DEP. COMM. LEWIS:** Not at all.

21 **MS. LALJI:** I want to talk to you a little
22 bit more about press releases and the media. Stories of a
23 sensational nature get much more attention than stories
24 that are more run of the mill or perhaps everyday life.
25 That would fair?

1 **DEP. COMM. LEWIS:** Generally speaking that's
2 the case.

3 **MS. LALJI:** And publications like, for
4 example, the National Enquirer, they make their living on
5 publishing those types of stories, don't they?

6 **DEP. COMM. LEWIS:** Apparently they do, yes.

7 **MS. LALJI:** You mean you don't read it?

8 **DEP. COMM. LEWIS:** No. Ever since I heard a
9 300 pound male wrestler gave birth on the headlines, I ---

10 **(LAUGHTER/RIRES)**

11 **THE COMMISSIONER:** Ms. Lalji will be pleased
12 to send you a copy of hers.

13 **(LAUGHTER/RIRES)**

14 **MS. LALJI:** So I take it that you would
15 agree with me that in some instances the truth does get
16 sacrificed for the sake of a little bit more of a
17 newsworthy sensational story?

18 **DEP. COMM. LEWIS:** I'm sure in some media
19 outlets that's the case. It's not the norm I don't think
20 but it does occur.

21 **MS. LALJI:** I take it you'd also agree with
22 me that the City of Cornwall was subject to a considerable
23 amount of sensationalist reporting in the 1990s and beyond
24 that received far more attention than the sort of what I'm
25 calling sober press releases that the police services were

1 issuing in the 1990s?

2 **DEP. COMM. LEWIS:** I can't really say that
3 specifically about Cornwall. That certainly happened
4 around the country and in Ontario. When I was here in the
5 '93 to '95 time period there certainly was a lot of media
6 around the smuggling issues and the violence but it was
7 real, and I never ever -- in terms of the local paper at
8 least I never ever recall any sensationalism from them
9 regarding the issues that were near and dear to my heart.
10 Whether it occurred in other areas that I didn't pay
11 attention to, I don't know; but I wouldn't say that about
12 the paper -- the local media when I was here at that time.

13 **MS. LALJI:** On the smuggling issue?

14 **DEP. COMM. LEWIS:** On the smuggling issue,
15 yes. What they were printing was reality. And times maybe
16 they weren't printing as much reality because we weren't
17 necessarily telling them other things that they didn't
18 know.

19 **MS. LALJI:** Now, Deputy Commissioner, I
20 assume that you're familiar with the impact of cases such
21 as *Askov* and *Stinchcombe* ---

22 **DEP. COMM. LEWIS:** Right.

23 **MS. LALJI:** --- that they had on policing in
24 terms of bringing cases to trial more quickly and enhancing
25 the Crown's disclosure obligations?

1 **DEP. COMM. LEWIS:** Very much so, yes.

2 **MS. LALJI:** And I take it that you'd agree
3 with me that these had a significant impact on police
4 services in terms of adding to their workload in order to
5 comply with the laws of the day?

6 **DEP. COMM. LEWIS:** Yes, the disclosure issue
7 in itself has created more work for us, yes.

8 **MS. LALJI:** So police forces that were
9 already quite busy now had that added pressure to deal with
10 complying with the laws?

11 **DEP. COMM. LEWIS:** Oh, certainly, and that's
12 the case in any new legislation I suppose. But you're
13 right on the money, ultimately, you know, when we lay a
14 charge the clock starts ticking, as they say, and the
15 disclosure issues are greater than they once were, and
16 that's fine, I totally respect that, but there's just more
17 pressure, more volume, less time to get things disclosed.

18 **MS. LALJI:** Absolutely. And those would be
19 examples of operational strains that police services
20 generally face?

21 **DEP. COMM. LEWIS:** For sure, yes.

22 **MS. LALJI:** I take it that you'd agree with
23 me that police services were working very hard and very
24 long hours throughout the 1990s and they continue to do so
25 today?

1 **DEP. COMM. LEWIS:** For sure, yes.

2 **MS. LALJI:** And would you agree with me that
3 resource issues at the time added to the operational strain
4 within police services; things like heavy workload, perhaps
5 not having enough police officers to get the work done,
6 that would all add to the pressures, the operational
7 pressures of any organization?

8 **DEP. COMM. LEWIS:** Yes, and not just
9 specific to the '90s but in my entire career; the '70s, the
10 '80s, the '90s and now, that is without a doubt the case.
11 There's been peaks and valleys in that too in terms of
12 pressures and workload being greater for some periods than
13 others, but generally speaking that is a rule of thumb.

14 **MS. LALJI:** And that's the nature of
15 policing?

16 **DEP. COMM. LEWIS:** It's the nature of the
17 business, yes.

18 **MS. LALJI:** And would you agree with me,
19 Deputy Commissioner, that even today police resources face
20 -- sorry -- police services face these types of resource
21 issues? For example, a police service is not going to go
22 to its Board and say "No, thank you, we have plenty of
23 police officers," that's just not going to happen; they're
24 constantly grappling with staffing issues.

25 **THE COMMISSIONER:** Ms. Lalji, I've let you

1 go for a little bit now. This gentleman is not an expert
2 and has not been qualified in all of that. I think you're
3 best to leave those things for submissions.

4 **MS. LALJI:** Well, Mr. Commissioner, he has
5 been a police officer for many, many years and he can speak
6 from his experience.

7 **THE COMMISSIONER:** Well -- okay, I'll help
8 you out. Will any Board ever say they have enough police
9 officers? No. I mean, those are -- I'm not going to say
10 motherhood but generalities that -- you know, if you want
11 to speak specifically on specific issues please go to it,
12 but you've been at it for 25 minutes and we really ---

13 **MS. LALJI:** Okay, I'll pass that. He
14 answered my last question. I'll leave it at that.

15 **THE COMMISSIONER:** Fine.

16 **MS. LALJI:** Thank you very much.

17 **DEP. COMM. LEWIS:** You're welcome.

18 **THE COMMISSIONER:** Thank you.

19 All right. Mr. Carroll?

20 ---CROSS-EXAMINATION BY/CONTRE-INTERROGATOIRE PAR MR.

21 **CARROLL:**

22 **MR. CARROLL:** Good afternoon, sir.

23 **DEP. COMM. LEWIS:** Good afternoon, sir.

24 **MR. CARROLL:** My name is Carroll and I
25 appear on behalf of the Ontario Provincial Police

1 Association. I have only one point for you and it's more a
2 point of clarification than anything else.

3 It was suggested to you this morning, sir,
4 that Project Truth, for all intents and purposes, had
5 shutdown in 2000. Were you aware of Detective Inspector
6 Pat Hall's evidence that while awaiting the Crown brief's,
7 the latest which came in in August of 2001, had a new
8 complainant come forward that fit the mandate, the Truth
9 people would have continued their investigations?

10 **DEP. COMM. LEWIS:** I totally agree. In
11 fact, sir, I did say that a couple of different points
12 pending new victims or witnesses coming forward.

13 **MR. CARROLL:** Thank you very much.

14 **THE COMMISSIONER:** Thank you.

15 Ms. -- I'm sorry -- Ms. Brannan, do you have
16 any questions?

17 **MS. SACCOCCIO BRANNAN:** No, Mr.
18 Commissioner, I don't have any questions.

19 **THE COMMISSIONER:** Thank you.

20 Ms. Simms, do you have any questions?

21 **MS. SIMMS:** I have no questions.

22 Thank you, Deputy Commissioner.

23 **DEP. COMM. LEWIS:** Thank you.

24 **THE COMMISSIONER:** Deputy Commissioner
25 Lewis, thank you very much for coming down and spending

1 some time with us.

2 **MR. KOZLOFF:** Mr. Commissioner ---

3 **DEP. COMM. LEWIS:** Thank you, Commissioner.

4 **MR. KOZLOFF:** --- could I just do one thing?

5 **THE COMMISSIONER:** What's that?

6 **MR. KOZLOFF:** On behalf of the Ontario
7 Provincial Police, could I thank Brigitte for her
8 incredibly capable assistance in this room to us and to all
9 the other parties?

10 **THE COMMISSIONER:** Fine.

11 **MR. KOZLOFF:** Thank you.

12 **THE COMMISSIONER:** Flattery will get you
13 nowhere though.

14 **(LAUGHTER/RIRES)**

15 **MR. KOZLOFF:** It never stopped me before,
16 sir.

17 **THE COMMISSIONER:** Thank you.
18 Thank you very much for your recommendations
19 as well and I wish you all the best.

20 **DEP. COMM. LEWIS:** Thank you.

21 **THE COMMISSIONER:** Thank you very much.
22 Do you wish a short break so we can switch
23 things around?

24 Yes, Brigitte -- Madam Registrar would like
25 that.

1 (LAUGHTER/RIRES)

2 THE COMMISSIONER: All right. Five minutes.

3 THE REGISTRAR: Order; all rise. À l'ordre;
4 veuillez vous lever.

5 This hearing will resume at 2:35 p.m.

6 --- Upon recessing at 2:25 p.m./

7 L'audience est suspendue à 14h25

8 --- Upon resuming at 2:34 p.m./

9 L'audience est reprise à 14h34

10 THE REGISTRAR: Order; all rise. À l'ordre;
11 veuillez vous lever.

12 This hearing is now resumed. Please be
13 seated. Veuillez vous asseoir.

14 THE COMMISSIONER: Thank you.

15 MR. ENGELMANN: Good afternoon,
16 Mr. Commissioner.

17 THE COMMISSIONER: Good afternoon.

18 ---HOUSEKEEPING MATTERS BY/MATIÈRES ADMINISTRATIVES PAR MR.
19 ENGELMANN:

20 MR. ENGELMANN: Good afternoon,
21 Mr. MacDonald. We're just going to deal with a couple of
22 housekeeping matters before we get going.

23 Sir, I'm pleased to say that the Commission
24 is now going to start calling witnesses from the Ministry
25 of the Attorney General. I'm perhaps not quite as pleased

1 as counsel for the OPP and OPPA, but I am pleased
2 nonetheless, and I know that my friend Ms. McIntosh has
3 some brief comments to make just before we start the MAG
4 witnesses. So I'll turn over the floor.

5 **THE COMMISSIONER:** Thank you.

6 **--- STATEMENT BY/DÉCLARATION PAR MS. MCINTOSH:**

7 **MS. MCINTOSH:** Thank you.

8 Mr. Commissioner, before we start the Crown
9 evidence, I'd like to make a statement for the record and
10 it's simply this.

11 You may recall from Ms. Nethery's evidence
12 when she quoted the *Boucher* case, that Crown Attorneys have
13 a special role in the administration of justice and
14 basically the office is a quasi-judicial one. And Crown
15 Attorneys exercise an independent discretion with respect
16 to core decisions, such as whether or not to proceed with
17 charges.

18 And as the Supreme Court of Canada has said
19 in a case called *Beare*:

20 "Discretion is an essential feature of
21 the criminal justice system and a
22 system that attempted to eliminate
23 discretion would be unworkably complex
24 and rigid."

25 And it's for that reason, Mr. Commissioner,

1 that the law protects the exercise of core Crown discretion
2 from scrutiny, either by courts or by tribunals, except in
3 the case of malice.

4 And the Supreme Court of Canada said in a
5 leading case called *Krieger* that with respect to the core
6 of prosecutorial discretion:

7 "Courts cannot interfere except in
8 circumstances of flagrant impropriety
9 or in the case of malicious
10 prosecution."

11 And this is a recognition of the fact,
12 Mr. Commissioner, that reasonable Crown counsel will
13 reasonably differ about the exercise of discretion from
14 time-to-time and therefore honest exercises of Crown
15 discretion cannot be second-guessed.

16 The law protects the exercise of Crown
17 discretion for the same reason it protects decisions of
18 judges from being examined, as we've acknowledged at this
19 Inquiry. The protection is not for the benefit of the
20 judges or the Crown Attorneys themselves, but rather to
21 preserve the administration of justice and to preserve the
22 independence of their office in the interest of the
23 administration of justice.

24 And, again, the Supreme Court of Canada said
25 in a case called *Power*, that:

1 "This is based on the constitutional
2 principle of separation of powers, as
3 well as a matter of policy founded on
4 the interest of efficiency of the
5 system of the criminal justice and the
6 fact that prosecutorial discretion is
7 especially ill-suited to judicial
8 review."

9 Now, that's all I want to say,
10 Mr. Commissioner, about the points at this time.

11 Our intention is not to make legal argument.
12 The point will be developed in our submissions. And it's
13 not our intention to object to proper exercises about the
14 exercise of Crown -- proper questions about the exercise of
15 Crown discretion. The Crowns are willing to answer
16 questions about their decisions in order to assist in the
17 work of the Inquiry.

18 The reason for my remarks, Mr. Commissioner,
19 is just to say that while the Crowns will answer questions
20 about their decisions, they are doing so without prejudice
21 to the Ministry's position at the end of the day that the
22 exercise of their core discretion cannot be reviewed or
23 second-guessed except for allegations of malice.

24 And so we just want to put that on the
25 record to make it clear that the testimonies are without

1 prejudice -- that legal argument at the end of the day.

2 Thank you.

3 **THE COMMISSIONER:** That's fine. Thank you.

4 We'll see where the evidence leads us. Thank you.

5 Mr. Murray MacDonald.

6 **MR. MacDONALD:** Yes, sir.

7 **THE COMMISSIONER:** How are you today? How
8 are you today?

9 **MR. MacDONALD:** Very well.

10 **THE COMMISSIONER:** Good.

11 Would you swear in the witness?

12 **MURRAY MacDONALD, Sworn/Assermenté:**

13 **THE COMMISSIONER:** Thank you.

14 Mr. MacDonald?

15 **MR. MacDONALD:** Yes, sir.

16 **THE COMMISSIONER:** As I am apt to say to all
17 of the witnesses, you have fresh water and fresh glasses.
18 You will speak into the microphone -- I hope so because you
19 seem to be a soft-voiced person. What is most important
20 for me is that you be comfortable during this -- your stay
21 with us. So if at any time you feel uncomfortable or you
22 need a break, please let me know. Please answer the
23 questions to the best of your ability. If you don't
24 understand, let us know. If you don't know the answer or
25 you don't remember, that is understandable as well.

1 I see that you may have brought some notes
2 or things like that with you. What are those?

3 **MR. MacDONALD:** Materials provided to me by
4 my counsel or by the Commission.

5 **THE COMMISSIONER:** All right. Well, I would
6 ask you not to refer to those unless and until we talk
7 about them because what I'd like to do is stick with the
8 materials we have so I can coordinate it and make my notes,
9 so that there's some semblance of organization in it.

10 **MR. MacDONALD:** I also have some notes that
11 I collected of my own with respect to a recommendation I'd
12 like to make, but I won't be making reference to them until
13 that opportunity arises.

14 **THE COMMISSIONER:** That's fine. Yes, that's
15 fine. Great, thanks.

16 Mr. Engelmann?

17 **MR. ENGELMANN:** Thank you.

18 --- EXAMINATION IN-CHIEF BY/INTERROGATOIRE IN-CHEF PAR

19 **MR. ENGELMANN:**

20 **MR. ENGELMANN:** Good afternoon,
21 Mr. MacDonald.

22 Sir, what we will do is we'll be referring
23 to a subset, no doubt, of the documents that you have
24 already reviewed, and you'll just be getting them one at a
25 time. You will either be able to look at them on the

1 screen or a hard copy will be provided.

2 **MR. MacDONALD:** Thank you.

3 **MR. ENGELMANN:** All right?

4 And, sir, what I'd like to do is start with
5 your background very quickly, if I may.

6 Madam Clerk, if you could give the witness a
7 copy of Document Number 200316.

8 Mr. Commissioner, this is a career profile
9 of Murray MacDonald, Crown Attorney.

10 **THE COMMISSIONER:** M'hm.

11 **MR. ENGELMANN:** If that could be the next
12 exhibit, sir. Counsel, it is 200316.

13 **THE COMMISSIONER:** Thank you.

14 This is Exhibit 2920. It's a career profile
15 of Murray MacDonald.

16 **--- EXHIBIT NO./PIÈCE NO. P-2920:**

17 (200316) - Career Profile of Murray
18 MacDonald

19 **MR. ENGELMANN:** Two-nine-two-zero (2920),
20 sir?

21 **THE COMMISSIONER:** Yes.

22 **MR. ENGELMANN:** Mr. MacDonald, this is
23 either a document you prepared yourself or someone prepared
24 for you?

25 **MR. MacDONALD:** Yes.

1 **MR. ENGELMANN:** All right. And you've
2 reviewed it for its accuracy and relative completeness?

3 **MR. MacDONALD:** Yes, sir.

4 **MR. ENGELMANN:** It's a summary of your
5 background. Is that fair?

6 **MR. MacDONALD:** Twenty-one (21) years, yeah.

7 **MR. ENGELMANN:** All right.

8 And, sir, I just want to take you through
9 quickly some of your qualifications. It's my understanding
10 you received a Bachelor of Arts degree from the University
11 of Ottawa in 1981.

12 **MR. MacDONALD:** Yes.

13 **MR. ENGELMANN:** And your LLB and BCL from
14 McGill in 1985?

15 **MR. MacDONALD:** Yes, sir.

16 **MR. ENGELMANN:** And you were called to the
17 bar here in Ontario in April of 1987?

18 **MR. MacDONALD:** Yes.

19 **MR. ENGELMANN:** Following that, you joined a
20 Criminal Law Division of the Ministry of the Attorney
21 General as an assistant Crown Attorney, starting in
22 Sudbury, Ontario?

23 **MR. MacDONALD:** Yes.

24 **MR. ENGELMANN:** You worked there until you
25 transferred to the Stormont, Dundas and Glengarry office in

1 Cornwall as an assistant Crown Attorney in September of
2 1988?

3 MR. MacDONALD: That's right.

4 MR. ENGELMANN: And that in 1992 you were
5 appointed as the Crown Attorney for Cornwall?

6 MR. MacDONALD: Yes, sir.

7 MR. ENGELMANN: Sir, I understand you remain
8 in that position today.

9 MR. MacDONALD: Yes, sir.

10 MR. ENGELMANN: And that as of January 2nd,
11 2009, you will be the Acting Regional Director of Crown
12 Attorneys for the East Region.

13 MR. MacDONALD: Yes, sir.

14 MR. ENGELMANN: Sir, in terms of your
15 training, I understand you've set out a number of aspects
16 of continuing education and work experience on pages 2 and
17 3 of Exhibit 26 -- sorry, 2920. Is that correct?

18 MR. MacDONALD: Yes, sir.

19 MR. ENGELMANN: And in terms of some of the
20 conferences you've gone to, you've gone to a conference by
21 a Dr. Yuille on statement validity analysis in or around
22 1990?

23 MR. MacDONALD: Yes, I believe it was 1989.

24 MR. ENGELMANN: Eighty-nine, okay.

25 MR. MacDONALD: Sorry, if I -- it was closer

1 to 1989 than '90.

2 MR. ENGELMANN: Fair enough. And, sir, I
3 understand you received training on a number of topics,
4 including the prosecution of child abuse cases?

5 MR. MacDONALD: Yes, sir.

6 MR. ENGELMANN: Sexual assault cases?

7 MR. MacDONALD: Yes.

8 MR. ENGELMANN: And institutional abuse
9 cases?

10 MR. MacDONALD: Yes, sir.

11 MR. ENGELMANN: All right. And I
12 understand, sir, beginning relatively early in your career,
13 you obtained experience in the prosecution of sexual
14 assault cases and, in particular, those of an historical
15 report?

16 MR. MacDONALD: Are you referring to the
17 institutional prosecution at the Alfred Boys' School?

18 MR. ENGELMANN: That would be the bulk of
19 it, would it not, sir?

20 MR. MacDONALD: Yes, it would.

21 MR. ENGELMANN: And would that have been the
22 St. Joseph's Training School in Alfred, sir?

23 MR. MacDONALD: Yes, sir.

24 MR. ENGELMANN: All right, and ---

25 MR. MacDONALD: I was one of five members of

1 the prosecution team.

2 MR. ENGELMANN: I was just going to ask
3 that. You were a member of a prosecution team that was led
4 by Robert Pelletier?

5 MR. MacDONALD: Yes, sir.

6 MR. ENGELMANN: And, sir, what about
7 experience in prosecuting non-institutional, historical,
8 child sexual abuse cases? Had you had some of that before
9 becoming the Crown Attorney here in Cornwall in 1992?

10 MR. MacDONALD: Yes, sir, and in Sudbury as
11 well.

12 MR. ENGELMANN: All right. So you had done
13 one or more historical report cases in a non-institutional
14 setting?

15 MR. MacDONALD: Several.

16 MR. ENGELMANN: All right.

17 And, sir, I take it from your experience in
18 prosecuting both Alfred cases and these other cases that
19 you talked about, that you would have had some contact with
20 victims of child sexual abuse?

21 MR. MacDONALD: Yes, sir.

22 MR. ENGELMANN: And that you would have had
23 some experience then in dealing with them both as children
24 and also as adults reporting historical abuse?

25 MR. MacDONALD: Yes.

1 **MR. ENGELMANN:** And, sir, in your
2 experience, did you note with some of these individuals a
3 reluctance to come forward and make their allegations?

4 **MR. MacDONALD:** Yes, as well as incremental
5 disclosure of those allegations.

6 **MR. ENGELMANN:** Okay. And what do you mean,
7 sir, by "incremental disclosure of those allegations"?

8 **MR. MacDONALD:** Some persons initially,
9 especially young persons, will make a -- an overview
10 disclosure and then when pressed for details by the
11 investigators, will provide subsequent disclosures of --
12 rather some details of those events on subsequent
13 occasions ---

14 **MR. ENGELMANN:** All right.

15 **MR. MacDONALD:** --- or subsequent meetings.

16 **MR. ENGELMANN:** And that could happen on one
17 or more meetings after the -- after the initial meeting?

18 **MR. MacDONALD:** Yes. I've even seen it
19 happen in the midst of a trial on more than one occasion.

20 **MR. ENGELMANN:** All right. And so this was
21 not a uncommon experience ---

22 **MR. MacDONALD:** No.

23 **MR. ENGELMANN:** --- in those cases?

24 **MR. MacDONALD:** No, sir.

25 **MR. ENGELMANN:** All right.

1 And, sir, would you agree -- or what is your
2 view on whether or not that reflects on the credibility of
3 the particular victim?

4 **MR. MacDONALD:** It's a relevant fact as in
5 every relevant -- as in the case of every relevant fact.

6 It may or may not. It may, to a certain
7 degree, reflect upon the credibility of the complainant.
8 Some scenarios are -- have less effect on credibility;
9 indeed, can bolster credibility, based on the explanation
10 as to why something came out in an incremental way or not.
11 So it can have a salutary and sometimes a deleterious
12 effect on credibility.

13 **MR. ENGELMANN:** All right.

14 Sir, I understand aside from your
15 prosecutorial work, you have worked in victims' services
16 with a number of community organizations?

17 **MR. MacDONALD:** Yes.

18 **MR. ENGELMANN:** And, sir, as one example of
19 that, are you a member of the Sexual Assault Case
20 Management Advisory Committee?

21 **MR. MacDONALD:** Yes, sir.

22 **MR. ENGELMANN:** And that's of one of
23 the -- of the local women's shelters here in the Cornwall
24 area?

25 **MR. MacDONALD:** The program operates out of

1 that particular shelter, yes.

2 **MR. ENGELMANN:** All right. And what would
3 your role be on that committee, sir?

4 **MR. MacDONALD:** Legal advisor from time-to-
5 time when issues related to criminal justice -- the process
6 came into play.

7 **MR. ENGELMANN:** All right.

8 I understand as well there's a Sexual
9 Assault Resource Response Team; I believe it's called SART,
10 here in the Cornwall area?

11 **MR. MacDONALD:** I believe the name may have
12 changed, but, yes.

13 That program relates to a body that liaises
14 as between emergency nurses who deal with -- immediately
15 with the presenting victim of an alleged sexual assault, as
16 well as social workers in the hospital, and in the facility
17 like the Baldwin House and the after-care services they
18 provide.

19 It's another context where I provide legal
20 services from time-to-time in terms of counselling how to
21 take interviews of -- how to make notes on investigations
22 of sexual assaults that may find their way into the
23 criminal court.

24 **MR. ENGELMANN:** And, sir, have you acted for
25 some time as a resource person for that particular team?

1 **MR. MacDONALD:** Yes, since about 1988 or
2 '89.

3 **MR. ENGELMANN:** All right.

4 And, sir, I understand that you've conducted
5 some seminars for the Children's Aid Society?

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** Can you give us a sense as
8 to what the topics might have been?

9 **MR. MacDONALD:** In the late eighties, it was
10 apparent that police and CAS procedures with respect to
11 interviewing victims should sometimes be -- may sometimes
12 be at variance in terms of the procedures that the CAS
13 workers follow, or followed, in taking statements in the
14 context of child protection and family court proceedings
15 versus the police investigation for criminal court and the
16 collection of evidence and concerns about the admissibility
17 of that evidence in criminal court.

18 So our -- the efforts of the CAS, the
19 Cornwall Police and the OPP and the Crown Attorney's
20 office, was to try to find ways and means of adopting
21 consistent practices by both investigator -- by both CAS
22 and police investigators when possible, and when it wasn't
23 possible, it was essentially confirming that child
24 protection would trump the prosecution.

25 And if it meant, for instance, leading a

1 young complainant in order to get information that would be
2 deemed, or expected to be deemed, inadmissible in a
3 criminal court, at least it could be used in the context of
4 child protection family court proceedings.

5 **MR. ENGELMANN:** And, sir, so would it be
6 fair to say that in the late eighties/early nineties, you
7 would have conducted some seminars for child welfare
8 workers at the Childrens' Aid Society?

9 **MR. MacDONALD:** I recall tw at least.

10 **MR. ENGELMANN:** And, as such, would have
11 worked with the in-house counsel at the CAS, Elizabeth
12 MacLennan?

13 **MR. MacDONALD:** Yes.

14 **MR. ENGELMANN:** All right.

15 Sir, did you continue to have that kind of a
16 relationship with the CAS or was there a period of time
17 when that was somewhat different?

18 **MR. MacDONALD:** Yes, sir. That was from
19 1990 -- late 1993 until the late nineties or early in the
20 21st century.

21 **MR. ENGELMANN:** And the relation changed
22 somewhat? Was this as a result -- or at or around the time
23 of the Silmsler allegations and some publicity about that
24 and other matters?

25 **MR. MacDONALD:** Yes, sir, there was a

1 chilling effect that I sensed as between the various
2 participants in the criminal and police and child
3 protection contexts, probation as well.

4 That same chill was, I think, felt in other
5 contexts outside of our business throughout the city. I
6 think you -- you know what I'm referring to -- everyone
7 seemed to be looking over their shoulders, in a
8 professional context.

9 **MR. ENGELMANN:** All right. And this
10 was -- you're talking about a time period when there was
11 publicity about an illegal settlement involving the Diocese
12 and a priest and Mr. Silmsler, and the issues that followed
13 therefrom?

14 **MR. MacDONALD:** The allegations of cover-up
15 and who was part of the cover-up and who wasn't, if
16 anybody.

17 **MR. ENGELMANN:** All right. And so there was
18 a chilling effect on relations between your offices and
19 some of the other institutions?

20 **MR. MacDONALD:** Yes. It was not overt, it
21 was just simply that we were all disinclined to approach
22 one another in the same congenial fashion that we used to.

23 **MR. ENGELMANN:** And has that changed more
24 recently, sir?

25 **MR. MacDONALD:** Yes, sir. It's improved

1 dramatically in the last five years, certainly since the
2 commencement of this Inquiry.

3 **MR. ENGELMANN:** All right.

4 Now, sir, we've heard some evidence from
5 police and CAS witnesses about joint investigations between
6 those two institutions?

7 **MR. MacDONALD:** Yes.

8 **MR. ENGELMANN:** And you would have, at least
9 initially, when you talk about late eighties/early
10 nineties, been involved in some way in trying to foster
11 those types of joint investigations. Is that fair?

12 **MR. MacDONALD:** Yes.

13 **MR. ENGELMANN:** And you were a proponent of
14 them?

15 **MR. MacDONALD:** Yes.

16 **MR. ENGELMANN:** And why do you believe that
17 it's important for those two agencies to work together in
18 investigating or doing joint investigations of cases
19 involving the abuse of children, whether they're child
20 sexual abuse or other types of abuse cases?

21 **MR. MacDONALD:** When you can get the
22 information right, and get it right right off the bat, it
23 enhances the results of cases, be they in criminal court or
24 in family court.

25 **MR. ENGELMANN:** Do you feel that your office

1 has a continuing role in assisting those institutions in
2 understanding the issues involved?

3 **MR. MacDONALD:** We see them as partners,
4 stakeholders; and in that context they are always ready to
5 provide legal services as Crown attorneys' offices are able
6 and expected to do.

7 **MR. ENGELMANN:** Sir, there have been a
8 number of changes, substantive changes to the law dealing
9 with sexual assault-type offences, in particular sexual
10 assault offences with young people as well. And we have
11 covered this during corporate presentations of the Ministry
12 of the Attorney General and other institutions but, sir, by
13 way of example I understand that there were a number of
14 changes in 1988 when you were a young prosecutor.

15 **MR. MacDONALD:** Or '87, yeah, just as I was
16 coming on board, yes.

17 **MR. ENGELMANN:** And there were a number of
18 new offences created at or about that time?

19 **MR. MacDONALD:** Yes.

20 **MR. ENGELMANN:** And for example the offence
21 of invitation to sexual touching would be one that was
22 added?

23 **MR. MacDONALD:** M'hm.

24 **MR. ENGELMANN:** There would have been
25 offences dealing with sexual exploitation?

1 **MR. MacDONALD:** Yes, sir.

2 **MR. ENGELMANN:** And sir, there were changes
3 in how Rules were applied as well, were there not, for
4 example corroboration and the necessity of corroboration?

5 **MR. MacDONALD:** Yes.

6 **MR. ENGELMANN:** And the abolition of the
7 requirement for corroborative evidence would apply to
8 historical offences as well, did it not?

9 **MR. MacDONALD:** Yes, yes.

10 **MR. ENGELMANN:** All right.

11 And this evolution or change in offences
12 would have complicated, to some extent, the investigation
13 and/or prosecution of these cases?

14 **MR. MacDONALD:** It wouldn't have complicated
15 the prosecution of them. He was cleared rather quickly
16 after the amendments based on rules of statutory
17 interpretation as to, you know, how to use the -- how to
18 require or in fact not require corroboration even for the
19 dating back cases. So it was a rather easy transition as
20 far as the prosecution is concerned. I thought likewise
21 with the police as well.

22 **MR. ENGELMANN:** All right.

23 Well, would it be fair to say at least that
24 police officers might seek more guidance or assistance from
25 Crown attorneys particularly with respect to the initial

1 laying of charges to ensure that they are laying the right
2 charges given the timeframe in question?

3 **MR. MacDONALD:** Well, corroboration prior to
4 -- when corroboration was a statutory requirement, it was -
5 - it made it that much more easier for the authorities when
6 investigating to determine, "Well, I don't have
7 corroboration, I don't have a case," or, "I do have
8 corroboration" and obviously got -- likely got a case.

9 Now, corroboration took on a life -- I
10 shouldn't say a life on its own. It took on a different
11 life after the abrogation and after the changes in the
12 *Evidence Act*. And in that context corroboration now became
13 very much a part of the formulation of reasonable and
14 probable grounds. Just because you didn't have
15 corroboration it did not necessarily mean you couldn't
16 proceed with the charge.

17 **MR. ENGELMANN:** Sir, did you and other local
18 Crown prosecutors receive training on these various
19 legislative changes?

20 **MR. MacDONALD:** Yes.

21 **MR. ENGELMANN:** And was that provided
22 internally through the Ministry or were there external
23 courses as well?

24 **MR. MacDONALD:** I recall internal courses.
25 Most of my continuing education was in the context of

1 internal courses through the Criminal Law Division and the
2 Ontario Crown Attorneys Association, and that included a
3 particular spring conference which was an education
4 conference of three to four days and a fall conference
5 likewise, and summer schools, as we called them, usually at
6 quiet university campuses in the months of July and August.

7 **MR. ENGELMANN:** All right.

8 And these training sessions would they occur
9 at or about the time of new legislation and shortly
10 thereafter?

11 **MR. MacDONALD:** They were scheduled to
12 rollout -- they were scheduled to occur just after the
13 statutory rollout.

14 **MR. ENGELMANN:** All right.

15 **MR. MacDONALD:** The amended rollout.

16 **MR. ENGELMANN:** Okay. And sir, I'd like to
17 ask you a few questions about the organization of the Crown
18 office here and your role as the Crown attorney.

19 **MR. MacDONALD:** All right.

20 **MR. ENGELMANN:** And I understand when you
21 came here you came as an assistant Crown attorney.

22 **MR. MacDONALD:** Yes, sir.

23 **MR. ENGELMANN:** And the Crown attorney at
24 the time, was that a fellow by the name of Don Johnston?

25 **MR. MacDONALD:** Yes, sir.

1 **MR. ENGELMANN:** All right.

2 And were you the sole assistant Crown then
3 or was there -- did you have other colleagues?

4 **MR. MacDONALD:** There was a legal staff of
5 three, Mr. Johnston and two assistant Crown attorneys. I
6 was one and Guy Simard was the other one.

7 **MR. ENGELMANN:** All right. And how long did
8 that situation persist with the three of you?

9 **MR. MacDONALD:** Mr. Johnston decided to go
10 into private practice in January of 1992 and I was then
11 appointed Acting Crown Attorney and I became a fulltime
12 Crown attorney in April or May of 1992.

13 **MR. ENGELMANN:** And were you able to hire
14 some assistant Crowns that year?

15 **MR. MacDONALD:** Yes, sir. We hired a third
16 -- a second assistant Crown, a third member of the legal
17 staff in late 1992.

18 **MR. ENGELMANN:** So throughout the calendar
19 year 1992 you and Mr. Simard were essentially the sole
20 Crowns here?

21 **MR. MacDONALD:** Yes, I occasionally retained
22 the per diem services of a member of the local bar who
23 assisted with some trial and plea courts.

24 **MR. ENGELMANN:** All right. And then in the
25 calendar year 1993 you would have been the Crown attorney

1 and you would have been assisted by Mr. Simard and Ms.
2 Robinson?

3 **MR. MacDONALD:** Ms. Robinson was the young
4 lady that was the third member of the legal team.

5 **MR. ENGELMANN:** Hired in the fall of '92?

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** All right.

8 And I understand, sir, that over the course
9 of years your office has grown considerably.

10 **MR. MacDONALD:** Yes, sir.

11 **MR. ENGELMANN:** All right. And sir, am I
12 correct in saying now that you have nine fulltime
13 equivalent counsel on staff?

14 **MR. MacDONALD:** Yes, sir, including me.

15 **MR. ENGELMANN:** Yes, and you as well have
16 three per diem lawyers you use from time to time?

17 **MR. MacDONALD:** Yes, sir.

18 **MR. ENGELMANN:** Okay. And these are for
19 prosecuting cases in this area?

20 **MR. MacDONALD:** Yes, sir, SDG.

21 **MR. ENGELMANN:** All right.

22 And sir, would it be fair to say that your
23 duties have changed overtime from presumably doing less
24 trial or less litigation work and now more office
25 management?

1 **MR. MacDONALD:** That's an understatement.

2 **MR. ENGELMANN:** All right.

3 And that would include file management,
4 office administration, human resources; things of that
5 nature?

6 **MR. MacDONALD:** Yes, sir.

7 **MR. ENGELMANN:** And sir, do you conduct
8 trials today?

9 **MR. MacDONALD:** I usually conduct portions
10 of trials; that is to say, sentences, pre-trials, and those
11 elements of case management. I don't find myself in court
12 for any longer than one day at a time anymore by virtue of
13 those other items that you just described.

14 **MR. ENGELMANN:** All right.

15 So sir, you would still be involved in
16 charge screening?

17 **MR. MacDONALD:** Yes, sir.

18 **MR. ENGELMANN:** Pre-trial conferences?

19 **MR. MacDONALD:** Yes, sir.

20 **MR. ENGELMANN:** Sentencing stages, et
21 cetera?

22 **MR. MacDONALD:** Occasionally.

23 **MR. ENGELMANN:** And sir, in terms of how
24 cases are assigned and cases are often assigned to a
25 particular prosecutor to handle; is that correct?

1 MR. MacDONALD: Yes, sir.

2 MR. ENGELMANN: That would be the typical
3 situation?

4 MR. MacDONALD: At one point in the
5 prosecution it would be assigned.

6 MR. ENGELMANN: Right. And you assign cases
7 in your office?

8 MR. MacDONALD: Yes, sir.

9 MR. ENGELMANN: And once a Crown is assigned
10 to a case, do you play some supervisory role in terms of
11 the conduct of the case?

12 MR. MacDONALD: Yes, sir.

13 MR. ENGELMANN: And you would be consulted,
14 for example, if there are plea bargains or sentencing
15 arrangements?

16 MR. MacDONALD: Occasionally, yes.

17 MR. ENGELMANN: All right.

18 And there would be regular meetings of
19 office staff to discuss cases to obtain input, et cetera?

20 MR. MacDONALD: We have regular monthly
21 meetings, one per month, and then we have rather impromptu
22 meetings, that we call scrums, case-specific.

23 MR. ENGELMANN: All right.

24 Sir, I understand that as early as 1989 the
25 Ministry required that at least one Crown attorney in each

1 office be designated as a local resource in sexual assault
2 cases.

3 MR. MacDONALD: Yes, sir.

4 MR. ENGELMANN: And who was designated here
5 in the Cornwall area?

6 THE COMMISSIONER: In what year now, '89?

7 MR. ENGELMANN: Starting back in '89.

8 MR. MacDONALD: I believe I was designated
9 for both sexual assault and domestic violence, prosecutions
10 that was another category of special designation; and Mr.
11 Simard was the designated child abuse prosecutor. We both
12 shared that designation from time to time until that
13 designation became obsolete in the mid to late 1990s.

14 MR. ENGELMANN: All right.

15 So that form of designation is no longer
16 used by the Ministry?

17 MR. MacDONALD: No, sir.

18 MR. ENGELMANN: All right.

19 And even when there was a designation you
20 may have gotten more of those cases but you would still do
21 other cases as well?

22 MR. MacDONALD: Yes, sir.

23 THE COMMISSIONER: So domestic violence is
24 not used anymore?

25 MR. MacDONALD: Domestic violence is -- it's

1 no longer -- it's now attached to a special court.

2 **THE COMMISSIONER:** Right.

3 **MR. MacDONALD:** So domestic violence
4 prosecutors are attached to that court as opposed to just
5 designated to overview some or all of those files from time
6 to time. It's much more of a full-time rotation than it
7 was under the old regime.

8 **THE COMMISSIONER:** Okay, but I don't want
9 the impression left that they just discarded domestic
10 violence Crown attorneys. What you've done is you have
11 setup a specialized court and you have got dedicated Crowns
12 that rotate in and out.

13 **MR. MacDONALD:** Yes, it's actually the -- I
14 understand what Your Honour is saying it's actually the
15 opposite. It's become more focused than it ever was and in
16 the context of DVs, yeah.

17 **THE COMMISSIONER:** Yeah, all right.

18 **MR. ENGELMANN:** Sir, just to focus then on
19 the Inquiry, you have -- I guess you've known for some time
20 you were going to be a witness here?

21 **MR. MacDONALD:** Yes.

22 **MR. ENGELMANN:** And so you would have done
23 some preparation for your testimony here?

24 **MR. MacDONALD:** Yes.

25 **MR. ENGELMANN:** And, sir, would you have

1 read some transcripts of evidence of others?

2 MR. MacDONALD: Yes.

3 MR. ENGELMANN: Or watched some of the
4 evidence that's been given?

5 MR. MacDONALD: I haven't read transcripts,
6 to speak of, of these proceedings. I've read transcripts
7 of other interviews and proceedings that were, you know, in
8 the materials you provided me.

9 MR. ENGELMANN: All right.

10 MR. MacDONALD: But I haven't been following
11 the Inquiry as close as I wish I could. I've been -- I
12 occasionally can watch the live stream. I wasn't able to
13 schedule in as much of that time as I would have liked, but
14 I have on occasion.

15 MR. ENGELMANN: All right. So you've heard
16 or seen some evidence from some of the other institutions
17 and/or victims or alleged victims that have testified?

18 MR. MacDONALD: Some, yes.

19 MR. ENGELMANN: All right.

20 And, sir, you've had an opportunity to
21 review some documents and/or notes that have been provided?

22 MR. MacDONALD: Some, yes.

23 MR. ENGELMANN: All right.

24 And so what we'll do as we go through some
25 of this is if you need to have a look at a document again,

1 that will be available to you.

2 MR. MacDONALD: Thank you.

3 MR. ENGELMANN: All right.

4 And I want to talk to you about your
5 involvement in a number of matters, but perhaps the largest
6 one is the complaints that were filed by David Silmsler, and
7 maybe we could start there.

8 You were aware, presumably, that he came
9 into the Cornwall Police Service sometime in December of
10 1992, and I just want to start by asking you if you can
11 recall when you first became aware of his allegations and
12 by what means.

13 MR. MacDONALD: I believe it was in February
14 of 1993 when Heidi Sebalj, the detective in charge of the
15 case, came upstairs to our day office, which is an
16 anteroom, a back room to the Provincial Court rooms where
17 they were then situate on the fourth floor of 340 Pitt
18 Street. So that was two blocks away from -- three blocks
19 away from our office which was ---

20 MR. ENGELMANN: All right.

21 MR. MacDONALD: --- down at the District
22 Court building, County Court building, and it was common
23 for detectives and constables to meet me up there. That's
24 where she met me and that's where she filled me in on the
25 case.

1 **MR. ENGELMANN:** All right. So that would
2 have been an informal meeting?

3 **MR. MacDONALD:** Yes.

4 **MR. ENGELMANN:** All right. Do you recall if
5 she had any documents or any notes that she shared with you
6 at your first meeting?

7 **MR. MacDONALD:** She had a statement of the
8 complainant's that I believe she showed me at the first
9 meeting, but I can't say for sure it was the first; it
10 might have been the second.

11 **MR. ENGELMANN:** All right. You're not sure
12 if she had a statement from the complainant in the first
13 meeting?

14 **MR. MacDONALD:** I can't say for sure but I
15 believe she did.

16 **MR. ENGELMANN:** All right.

17 **MR. MacDONALD:** I read the statement very
18 early on in our interventions and she and I had met on
19 about seven to 10 occasions between February and August on
20 the same file.

21 **MR. ENGELMANN:** And that -- the statement
22 you're referring to, is that a handwritten statement?

23 **MR. MacDONALD:** I believe so, yes.

24 **MR. ENGELMANN:** Perhaps the witness could
25 just be shown -- it's Exhibit 262.

1 Counsel, that's Document Number 725227.

2 MR. MacDONALD: Do you know where it is in
3 the tabbed binder that you provided me?

4 THE COMMISSIONER: I'm sorry?

5 MR. MacDONALD: I'm just curious to ---

6 MR. ENGELMANN: Mr. MacDonald, I'd like you
7 to look at the official copy.

8 MR. MacDONALD: Oh, I see.

9 MR. ENGELMANN: Yeah.

10 MR. MacDONALD: Okay.

11 MR. ENGELMANN: Madam Clerk, if you could
12 also have available for the witness Exhibit 1233.

13 And Mr. Commissioner, Mr. MacDonald, this is
14 a statement you would have given to Ontario Provincial
15 Police officers in the summer of 1994.

16 MR. MacDONALD: Yes, I remember that
17 statement.

18 MR. ENGELMANN: And counsel, that is
19 Document Number 714888, Exhibit 1233.

20 I'm not going to go into the handwritten
21 statement right now, Mr. MacDonald, but do you know if this
22 is in fact the document that Ms. Sebalj would have had with
23 you when she first met with you? Or Constable Sebalj.

24 MR. MacDONALD: I presume it is. I believe
25 it is.

1 **MR. ENGELMANN:** Okay. It's an eight-page
2 handwritten statement written out by Mr. Silmser?

3 **MR. MacDONALD:** Yes.

4 **MR. ENGELMANN:** All right. And we've been
5 told that that was provided to Constable Sebalj on or about
6 the 16th of February 1993. So it would be fair to say that
7 your first meeting with her was probably shortly after she
8 received that statement?

9 **MR. MacDONALD:** I'd expect within a week to
10 10 days.

11 **MR. ENGELMANN:** All right, okay.

12 And, sir, you were -- this was an informal
13 meeting with her at that time?

14 **MR. MacDONALD:** It was not pre-scheduled.

15 **MR. ENGELMANN:** Right. And in fact you
16 mentioned that you might have met with her as many as seven
17 to 10 times ---

18 **MR. MacDONALD:** Yes, sir.

19 **MR. ENGELMANN:** --- about this matter?

20 **MR. MacDONALD:** Yes, sir.

21 **MR. ENGELMANN:** During the months of
22 February through August?

23 **MR. MacDONALD:** Yes, sir.

24 **MR. ENGELMANN:** And, sir, were those all
25 informal meetings, if I can call them that?

1 **MR. MacDONALD:** The second or third meeting
2 that took place in early March I would describe as formal
3 to the extent that I'd sent her off to do some follow --
4 gather up some follow-up information on our first or second
5 meeting, and she'd come back to me with that information.
6 I was tied up on the fourth floor at the time and so I told
7 her that I would visit her either at lunch or at the end of
8 the day, I forget which, and that I would meet her at the
9 CIB office downstairs at the main floor of the Cornwall
10 Police offices.

11 **MR. ENGELMANN:** All right. Sir, at any of
12 these meetings would you have taken notes?

13 **MR. MacDONALD:** Probably not.

14 **MR. ENGELMANN:** Okay. Do you know if she
15 did?

16 **MR. MacDONALD:** I don't recall her ever
17 taking notes.

18 **MR. ENGELMANN:** All right. So we don't have
19 any notes that would have been made contemporaneously to
20 refresh your memory.

21 **MR. MacDONALD:** No. It's one of the changes
22 in practice that I've undertaken since this case came up.

23 **MR. ENGELMANN:** You take notes when you meet
24 with police officers?

25 **MR. MacDONALD:** Under certain circumstances

1 either -- I've different methods of note-taking based on
2 the nature of the meeting, if it's pre-charge, post-charge.

3 **MR. ENGELMANN:** Fair enough.

4 And, sir, you were interviewed in the summer
5 of 1994 -- and you should have Exhibit 1233 handy.

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** Perhaps to your right.

8 **MR. MacDONALD:** It's the July interview by
9 Detective Inspector Smith?

10 **MR. ENGELMANN:** Yes, and he was accompanied
11 by a fellow named Mike Fagan, a detective constable?

12 **MR. MacDONALD:** Yes, sir.

13 **MR. ENGELMANN:** And it's about a seven-page
14 statement.

15 **MR. MacDONALD:** I'm long-winded.

16 **MR. ENGELMANN:** Okay, fair enough.

17 Sir, you've had an opportunity to review
18 that document in your preparation?

19 **MR. MacDONALD:** Yes, thank you.

20 **MR. ENGELMANN:** All right.

21 And, sir, to your knowledge is it an
22 accurate reflection of what you would have told the police
23 officers at that time?

24 **MR. MacDONALD:** Was this the interview where
25 it was not -- where the recording didn't ---

1 MR. ENGELMANN: No.

2 MR. MacDONALD: That was the '98 interview?

3 MR. ENGELMANN: Yes. Yes, they came to see
4 you in December of '98 as well. I believe at that time it
5 was Officers Smith and Hall.

6 MR. MacDONALD: Right.

7 MR. ENGELMANN: I may be mistaken but we'll
8 come to that. But they came one day and the tape didn't
9 work, so they had to come back the next day.

10 MR. MacDONALD: The only comment I'd make on
11 the '94 interview is I was given what I took to be a police
12 caution but it was not read out to me in the standard card
13 context, but before the interview was started I had the
14 clear message from Inspector Smith that I was being
15 interviewed on a -- as a person of interest in an obstruct
16 justice investigation.

17 MR. ENGELMANN: And he would have indicated
18 that to you.

19 MR. MacDONALD: Yes.

20 MR. ENGELMANN: But he never cautioned you
21 at the time, formally?

22 MR. MacDONALD: No. I cautioned myself.

23 MR. ENGELMANN: All right. And he would
24 have advised you that he was doing two or three
25 investigations at the same time in 1994?

1 MR. MacDONALD: Yes, sir.

2 MR. ENGELMANN: At the request, essentially,
3 of the Cornwall Police Service?

4 MR. MacDONALD: Yes.

5 MR. ENGELMANN: All right.

6 MR. MacDONALD: And at the request of the
7 Regional Director of Crown Attorneys.

8 MR. ENGELMANN: All right.

9 And, sir, just going back to 1994 for a
10 minute; had you ever been interviewed by police officers
11 before?

12 THE COMMISSIONER: As a person of interest?

13 MR. ENGELMANN: Yes. I'm sorry.

14 MR. MacDONALD: Except for a speeding
15 ticket, sir.

16 MR. ENGELMANN: So the answer would be no,
17 not in this kind of a ---

18 MR. MacDONALD: Not in this kind of context.

19 MR. ENGELMANN: Fair enough.

20 And you'd agree, sir, that ---

21 MR. MacDONALD: Well, hold it. I'm getting
22 my timing wrong, sir.

23 I was interviewed by the provincial police
24 in early 1994 in the subject of an investigation that was
25 launched where my father was the suspect.

1 **THE COMMISSIONER:** M'hm.

2 **MR. MacDONALD:** And it's fair to say that
3 whereas I wasn't cautioned, nor was there a need for me I
4 guess to be, I certainly was -- questions were put to me
5 that would have related to my knowledge and conduct of my
6 father's proven criminal misconduct.

7 **MR. ENGELMANN:** That was in February of '94,
8 was it not?

9 **MR. MacDONALD:** Yeah, February or March.

10 **MR. ENGELMANN:** And we'll come to that. And
11 I apologize; there was an interview before July.

12 All right. So in 1994 you have two
13 interviews with police officers, right?

14 **MR. MacDONALD:** Yes, sir.

15 **MR. ENGELMANN:** Obviously about two
16 different things.

17 **MR. MacDONALD:** Right. I was interviewed in
18 late '93 or January of '94 by the Ottawa Police as well.

19 **MR. ENGELMANN:** Yes.

20 **MR. MacDONALD:** I didn't know it was an
21 interview until after I'd read their report, but at any
22 rate, that was also in the context of this case.

23 **MR. ENGELMANN:** All right. And I'll come to
24 that as well. All right?

25 So let's just deal with this one for now.

1 Would you agree, sir, that when being interviewed by the
2 police it's important to be as accurate and complete as you
3 can?

4 **MR. MacDONALD:** Yes.

5 **MR. ENGELMANN:** And to provide all relevant
6 information?

7 **MR. MacDONALD:** Yes.

8 **MR. ENGELMANN:** All right. And, sir, would
9 you agree as well that your recollection of the events in
10 1993 would be better in 1994 than it is today?

11 **MR. MacDONALD:** I've heard some things or
12 read some things in the newspaper that either triggered my
13 memory about events in the summer and early autumn of '93.
14 I've also learned things that I didn't know in early -- in
15 1993 and early 1994. So I have to be careful when I say
16 some -- I may have some comments that I would now
17 articulate differently having regard to what I've learned
18 in the Inquiry so it's kind of dangerous to describe what -
19 --

20 **MR. ENGELMANN:** That's been hard for a lot
21 of people because you learn about other things that you
22 might not have known. But in 1994, in the summer, what you
23 knew you tried to give to the OPP?

24 **MR. MacDONALD:** Right.

25 **MR. ENGELMANN:** And on many of those issues

1 your -- the information was a lot fresher to you then than
2 it is today?

3 MR. MacDONALD: Yes.

4 MR. ENGELMANN: All right.

5 And, sir, if we look at that -- and I'm
6 going to look at this from time to time as I ask you
7 questions, but if you turn to page 13, which is -- and
8 they're what we call Bates pages at the top left, and the
9 last three digits are 847. You refer to the first contact
10 with Heidi Sebalj in this matter at the bottom of that
11 page. You say:

12 "I was approached by Constable Sebalj,
13 it was in a hallway type conversation,
14 that's where most Crown and police
15 contact is. All type conversations up
16 at the courthouse. She advised me
17 there was a case going on that she had
18 on the go that she was having
19 difficulty with. She felt it was a
20 sensitive case because of the target in
21 the investigation, et cetera."

22 So, I mean, that was your recall, I think,
23 of the first meeting at the time. And that would be
24 consistent with what you said was a number of those
25 informal sessions you would have had with Constable Sebalj?

1 MR. MacDONALD: Yes, sir.

2 MR. ENGELMANN: They would be in the hallway
3 at the courthouse?

4 MR. MacDONALD: Hallway or in our Crown room
5 in the courthouse.

6 MR. ENGELMANN: They wouldn't typically be
7 pre-planned meetings?

8 MR. MacDONALD: I think there were two pre-
9 planned meetings.

10 MR. ENGELMANN: All right.

11 MR. MacDONALD: The rest were all impromptu.

12 MR. ENGELMANN: All right.

13 So just going back to the first meeting, you
14 believe she showed you the statement that we looked at, the
15 handwritten statement?

16 MR. MacDONALD: Yes, sir.

17 MS. McINTOSH: I think he said it could have
18 been that ---

19 THE COMMISSIONER: First or second.

20 MS. McINTOSH: --- first or second.

21 MR. ENGELMANN: Fair enough.

22 THE COMMISSIONER: I don't know that much
23 turns on it.

24 MR. ENGELMANN: Yeah. Sorry.

25 THE COMMISSIONER: In the early part of your

1 meetings with Constable Sebalj she showed you a statement?

2 MR. MacDONALD: Yeah, and those two meetings
3 -- the first two meetings would have been about two or
4 three days apart probably, maybe a week.

5 MR. ENGELMANN: All right.

6 So you're just not sure which one you would
7 have actually seen the statement at?

8 MR. MacDONALD: Right, but I ---

9 MR. ENGELMANN: Okay.

10 MR. MacDONALD: I believe it was the first
11 one but I ---

12 MR. ENGELMANN: All right.

13 And do you recall whether you would have
14 read it at the time or whether she would have read it to
15 you?

16 MR. MacDONALD: I read it.

17 MR. ENGELMANN: All right.

18 And do you recall having any concerns in
19 particular at the time?

20 MR. MacDONALD: Yes, we needed more details
21 in a number of contexts. One of them -- my chief concern
22 was that there was reference to a judge who had -- was
23 involved with the suspect priest that he referred to and
24 the probation officer that he referred to, and I wanted to
25 find out right off the bat who and what that was about.

1 You'll recall that statement describes a judge as being
2 present when others -- when sexual misconduct was taking
3 place.

4 And I also asked for information on -- I was
5 informed that the complainant was not inclined to provide
6 details at that point about the probation officer so I
7 instructed Detective Sebalj to go back and probe for --
8 encourage him to provide us with more information on the
9 probation officer.

10 And there were other details that were
11 lacking and I just don't remember the specific instructions
12 that I gave in that regard, but you can conclude with
13 certainty that I'd sent her back to say get me more details
14 in this context, that context and the other.

15 **MR. ENGELMANN:** All right.

16 Now, what was her purpose in coming to you,
17 sir; do you recall?

18 **MR. MacDONALD:** Getting assistance in how to
19 navigate -- where to go with the investigation.

20 **MR. ENGELMANN:** And I believe -- and I'll go
21 back to that statement in a bit because I want to ask you a
22 couple of questions about what you just said. But when she
23 first came to you -- and I would have read something from
24 your statement at 1233 -- Exhibit 1233, I think you said --
25 I'll just be a moment. Yes, she felt that it was a

1 sensitive case because of the target of the investigation;
2 it was a high profile member of the community, a local
3 priest.

4 MR. MacDONALD: Well, there was three high
5 profile creatures that she and I were both jointly
6 concerned about; a judge, a probation officer and a priest.

7 MR. ENGELMANN: All right.

8 Well, I know about the priest and about the
9 probation officer because they were alleged abusers

10 ---

11 MR. MacDONALD: Right.

12 MR. ENGELMANN: --- of this complainant.

13 MR. MacDONALD: Right.

14 MR. ENGELMANN: And I'm not sure about the
15 judge.

16 MR. MacDONALD: As I recall I believe it's -
17 - he alludes near the end of his statement to a judge also
18 being present when events were -- criminal misconduct was
19 taking place. He was the victim.

20 MR. ENGELMANN: All right.

21 And that caused you a concern?

22 MR. MacDONALD: Yes.

23 MR. ENGELMANN: Because?

24 MR. MacDONALD: If a member of the judiciary
25 was alleged to be either a witness to or a party to any of

1 this misconduct it would have been -- I would have
2 immediately contacted the Director of Crown Attorneys for
3 advice.

4 **MR. ENGELMANN:** All right.

5 I'm thinking maybe that's another statement
6 but we'll come back to it if we can.

7 **MR. MacDONALD:** Okay. She told me that. If
8 it wasn't written it was -- she told me verbally about
9 that.

10 **MR. ENGELMANN:** All right.

11 At that point in time, according to your
12 statement -- I'm on page 13 and 14, so it's Bates pages 847
13 and 848. I believe she told you not only that it was a
14 sensitive case but that she had not reached a point of
15 reasonable and probable grounds at that point.

16 **MR. MacDONALD:** She said it wasn't even
17 close at that point.

18 **MR. ENGELMANN:** All right.

19 **MR. MacDONALD:** She wanted to know where
20 next to go in order that she could try and construct RPGs.

21 **MR. ENGELMANN:** All right.

22 Because I think -- and I'm paraphrasing, but
23 something along the lines she wanted to know what
24 suggestions that you might have had for assisting her in
25 determining whether or not she had the necessary grounds.

1 I think that's what she said.

2 If you look on -- it's page 14, Bates page
3 848, you say:

4 "She'd clearly not reached a point of
5 reasonable and probable grounds at that
6 point and indeed she was asking for my
7 direction on how to, what suggestions I
8 may have for assisting her in
9 determining whether or not she had the
10 necessary grounds."

11 **MR. MacDONALD:** Yeah, as I said, she was
12 looking for ways and means of getting to those grounds.

13 **MR. ENGELMANN:** All right.

14 And did she indicate to you at that point
15 that she was just starting her investigation?

16 **MR. MacDONALD:** Yes.

17 **MR. ENGELMANN:** All right.

18 And you're saying here that, "I instructed
19 her to dig deeper," to keep digging.

20 **MR. MacDONALD:** Yes, and I took on the role
21 of trying to advise on investigating and if she took any
22 wrong turns as a result of my advice in terms of
23 investigating I take responsibility for that, not Heidi.

24 **MR. ENGELMANN:** All right.

25 Well, I just want to ask you a little bit

1 about that. She actually asked you for assistance on the
2 investigation end; fair?

3 **MR. MacDONALD:** She wasn't -- she wasn't
4 looking for legal advice. She just wanted to know where to
5 turn next in terms of collecting evidence.

6 **MR. ENGELMANN:** And did you suggest to her
7 at that time that perhaps she should go back to her
8 supervisor for that advice?

9 **MR. MacDONALD:** I didn't suggest that until
10 weeks after, probably about meeting five or six or seven,
11 something in that zone. So I made the decision that I
12 would assist her with the investigation on a number
13 of -- and continue that practice in a number of meetings
14 prior to actually recommending she confer with her
15 supervisor.

16 **MR. ENGELMANN:** All right. Do you know why
17 she apparently preferred at that time to seek your advice
18 rather than her supervisor's?

19 **MR. MacDONALD:** That bureau was encumbered
20 by illness of staff and overwhelmed by volume of work
21 and ---

22 **MR. ENGELMANN:** Just let me stop you for a
23 second. "That bureau" being the CIB at the Cornwall Police
24 Service?

25 **MR. MacDONALD:** Yes, and the service at

1 large.

2 And I knew that she was very busy and that
3 her supervisor was very busy, and I thought it would just
4 be more expedient if I cut to the chase and said, "Collect
5 this information from the -- you know, from the Diocese.
6 Get this information from the school board." I was -- I
7 thought I would just cut to the chase.

8 **MR. ENGELMANN:** All right. Her supervisor
9 at the time was Staff Sergeant Brunet?

10 **MR. MacDONALD:** Yes.

11 **MR. ENGELMANN:** And did you know that he had
12 just started working as the head of the CIB in January of
13 1993?

14 **MR. MacDONALD:** Probably. I knew -- I knew
15 Lucien Brunet well.

16 **MR. ENGELMANN:** All right. And did you not
17 think that she might be better served seeking that kind of
18 advice from him as opposed to from yourself? Maybe you
19 didn't at the time, but, I mean ---

20 **MR. MacDONALD:** I do now.

21 **MR. ENGELMANN:** --- thinking back?

22 **MR. MacDONALD:** I'm not -- I do now, because
23 I -- Brunet is a better investigator than I am.

24 **MR. ENGELMANN:** That's his job?

25 **MR. MacDONALD:** That's his job.

1 **MR. ENGELMANN:** Yes.

2 **THE COMMISSIONER:** And, I dare say, you're
3 probably a better Crown than he is.

4 **(LAUGHTER/RIRES)**

5 **MR. MacDONALD:** I believe so.

6 **THE COMMISSIONER:** There you go.

7 **MR. ENGELMANN:** Sir, she would have advised
8 you that she had already met with Mr. Silmsen before you
9 first met with her?

10 **MR. MacDONALD:** Yes.

11 **MR. ENGELMANN:** And, in fact, you say on
12 that same page of your statement, about a third of the way
13 down:

14 "She felt uncomfortable about the
15 complainant she was dealing with
16 because she was having difficulty
17 getting information from him."

18 **MR. MacDONALD:** Well, that was -- may have
19 been the first meeting, but it wasn't -- that was more
20 pronounced in the second and subsequent meetings.

21 **MR. ENGELMANN:** All right.

22 Now, were you aware at that point-in-time
23 that there had been a fairly lengthy interview of Mr.
24 Silmsen in late January of 1993?

25 **MR. MacDONALD:** I don't recall.

1 **MR. ENGELMANN:** All right. And this would
2 have been an interview not just with Constable Sebalj, but
3 also with a constable by the name of Malloy ---

4 **MR. MacDONALD:** Yes.

5 **MR. ENGELMANN:** --- and a sergeant named
6 Lefebvre?

7 **MR. MacDONALD:** Yes. Yes, I don't recall
8 if -- I didn't -- I didn't read that -- I don't believe she
9 showed me that interview. I don't know if she even made
10 reference to it. She may have, but I don't recall.

11 **MR. ENGELMANN:** All right. And, presumably,
12 since the only documents you ever -- it was the only
13 document you ever saw in this file, that handwritten
14 statement?

15 **MR. MacDONALD:** From -- the only ---

16 **MR. ENGELMANN:** Yes.

17 **MR. MacDONALD:** --- document form the
18 complainant, yes.

19 **MR. ENGELMANN:** Right. And so you didn't
20 receive the police officer's notes, for example?

21 **MR. MacDONALD:** No.

22 **MR. ENGELMANN:** So there were notes from
23 these three officers at this meeting on January 28th. Those
24 were never provided to you?

25 **MR. MacDONALD:** No.

1 **MR. ENGELMANN:** All right.

2 **MR. MacDONALD:** I believe that she, on
3 occasion, would have made reference to components of that
4 interview.

5 **MR. ENGELMANN:** Fair enough.

6 **MR. MacDONALD:** I believe that's how she
7 would have referred -- have made reference to it.

8 **MR. ENGELMANN:** And when I'm talking "never
9 provided", I'm talking about during the period of time you
10 gave advice. From sometime in February until you wrote a
11 letter in mid-September, you never got a police brief or
12 police notes or documents; correct?

13 **MR. MacDONALD:** That was consistent with our
14 practice at that time.

15 **MR. ENGELMANN:** Fair enough, but I just ---

16 **MR. MacDONALD:** That's correct.

17 **MR. ENGELMANN:** Yes. And I'm assuming that
18 practice may have changed as well?

19 **MR. MacDONALD:** Yes.

20 **MR. ENGELMANN:** So at the initial meeting,
21 or initial meetings, the one or two meetings at the
22 beginning, she would have told you that she was
23 making -- that Mr. Silmsler was making allegations about
24 more than just Father MacDonald, more than just the priest?

25 **MR. MacDONALD:** Yes.

1 **MR. ENGELMANN:** All right. And, to your
2 knowledge, there were allegations against a probation
3 officer as well?

4 **MR. MacDONALD:** He didn't detail them, but
5 he said he'd been -- I believe his statement said that he'd
6 been abused as well by -- at that same time, or times, by a
7 probation officer.

8 **MR. ENGELMANN:** All right.

9 **MR. MacDONALD:** Can I -- and I know -- I
10 know the name; I recall the name.

11 **MR. ENGELMANN:** Sure, go ahead.

12 **MR. MacDONALD:** It was Probation Officer
13 Seguin.

14 **MR. ENGELMANN:** Yes.

15 And you say, at the bottom of the next page
16 of your statement, again the reference that you probably
17 had anywhere between eight, maybe seven, and ten contacts
18 with her from mid-winter of '93 until the time the police
19 determined not to charge?

20 **MR. MacDONALD:** Yes. I believe most of them
21 took place between February and April ---

22 **MR. ENGELMANN:** Okay.

23 **MR. MacDONALD:** --- perhaps May.

24 **MR. ENGELMANN:** All right.

25 **MR. MacDONALD:** There was a gap where I

1 think I only saw her once in June or July. She was going
2 to or coming from police college; I remember we had a
3 conversation about that.

4 **MR. ENGELMANN:** I just wanted -- yes, I
5 wanted to ask you about the frequency of your ---

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** --- your meetings.

8 **MR. MacDONALD:** The first two meetings
9 happened very shortly, one after the other, and then
10 they -- I would say they happened on a weekly or bi-weekly
11 basis for the months of March and April.

12 **MR. ENGELMANN:** All right, and then after
13 April?

14 **MR. MacDONALD:** I recall her reporting back
15 to me on information I'd asked her to collect. I think it
16 was with respect to his history of schools he had attended
17 at various years in his past.

18 I recall also we talked about her either
19 going to/coming from or going back to police college in
20 Aylmer, and we were discussing the -- how horrid the
21 macaroni and cheese dinners were at Aylmer. I recall that
22 conversation.

23 **MR. ENGELMANN:** All right.

24 And, sir, at Bates page 858 and it's 24 of
25 your OPP statement, it's to your right? You say:

1 "I had an ongoing..."

2 And you say:

3 "Every contact I had with her was an
4 update of the investigation and it was
5 verbal."

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** "It was always...this is
8 where I'm at now and so the plot was
9 thickening every time we spoke."

10 **MR. MacDONALD:** Yes.

11 **MR. ENGELMANN:** And I understand, sir, that
12 at some point-in-time you were made aware of a -- of a
13 "negotiation", if I can use the term, between Mr. Silmsen
14 and a representative of the Church or Diocese?

15 **MR. MacDONALD:** From Heidi, yes.

16 **MR. ENGELMANN:** All right. And do you
17 recall approximately when you would have been advised of
18 this?

19 **MR. MacDONALD:** I don't think it was the
20 first meeting but I think it was the second or third, so
21 later February, sometime in March; early March, I think.
22 She told me that he had expressed to her the desire to
23 commence a lawsuit.

24 **MR. ENGELMANN:** "He" being Mr. Silmsen?

25 **MR. MacDONALD:** Yes.

1 **MR. ENGELMANN:** And a civil lawsuit for ---

2 **MR. MacDONALD:** Yes.

3 **MR. ENGELMANN:** All right.

4 **MR. MacDONALD:** Yes.

5 **MR. ENGELMANN:** And for damages for abuse?

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** All right.

8 And so what about an actual negotiation of
9 sorts with counsel? Were you apprised of that by her or by
10 someone else, that there might have been some form of
11 negotiation?

12 **MR. MacDONALD:** She had conferred with the
13 fellow who I -- the lawyer who I thought was acting for the
14 Church. I was wrong; he was acting for, I think, the
15 defendant and that was Malcolm -- A. Malcolm MacDonald.

16 **MR. ENGELMANN:** All right. Angus Malcolm
17 MacDonald?

18 **MR. MacDONALD:** Yes.

19 She told me that she had -- she knew or had
20 heard from him as well and, a matter of fact, Malcolm
21 MacDonald contact me to confirm likewise sometime I think
22 in -- I don't recall now, March or April, that he was
23 undertaking some kind of civil resolution discussions with
24 him ---

25 **MR. ENGELMANN:** All right.

1 **MR. MacDONALD:** --- with the complainant.

2 **MR. ENGELMANN:** Well, let's just go back to
3 your statement and see what we've got there.

4 At page 16 of the statement, Bates page 850,
5 you're asked by Detective Inspector Smith:

6 "At any time did you become aware that
7 there might be a civil settlement that
8 Mr. Silmsler and the Church were
9 contemplating or about to enter into?"

10 And you say, at the bottom of that page:

11 "Constable Sebalj told me -- it wasn't
12 at our first meeting but it would have
13 been, I would say, perhaps in the area
14 of around March or April -- that she
15 knew that he was going to or had
16 attempted contacting the Church to seek
17 a civil settlement for damages that he
18 felt he suffered."

19 **MR. MacDONALD:** Right.

20 **MR. ENGELMANN:** All right? So is that
21 consistent, sir, with your recollection?

22 **MR. MacDONALD:** I think it -- I think now
23 that April is wrong, but that's something I've learned
24 since. I think it was more like March.

25 **MR. ENGELMANN:** All right.

1 And you go on on the next page to say:

2 "She initially as I recall told me he
3 had made these efforts or he'd
4 expressed his intention to make the
5 efforts, or he tried to make the
6 efforts."

7 So it would seem that you're being told that
8 this is sort of his initiative, if I can use that term?

9 **MR. MacDONALD:** Yes.

10 **MR. ENGELMANN:** All right.

11 **MR. MacDONALD:** That's the impression I got
12 from Heidi's report-back.

13 **MR. ENGELMANN:** All right. And were you
14 aware, sir, had you been advised at all whether he had a
15 lawyer during this period of time?

16 **MR. MacDONALD:** No, but I did presume he
17 did.

18 **MR. ENGELMANN:** You presumed he did?

19 **MR. MacDONALD:** Yes.

20 **MR. ENGELMANN:** All right.

21 And at some point, sir, I understand you
22 received a call from Angus Malcolm MacDonald himself
23 concerning this matter.

24 **MR. MacDONALD:** He called me on two
25 occasions concerning this matter.

1 **MR. ENGELMANN:** All right.

2 So let's talk about the first occasion and,
3 sir, do you recall approximately what month that would have
4 been in when he would have first contacted you?

5 **MR. MacDONALD:** I'd think March or April;
6 probably April.

7 **MR. ENGELMANN:** Well, if we look at your
8 statement, there's a reference at the bottom of page 22,
9 top of page 23, I believe, which is Bates 856 and 857.

10 You're asked about whether you're aware
11 Malcolm MacDonald was counsel for Father MacDonald. And
12 then you said that you learned initially from Constable
13 Sebalj that he was the lawyer for the priest, and ---

14 **MR. MacDONALD:** I thought -- initially, I
15 was of the impression he was the lawyer for the -- for the
16 Church.

17 **MR. ENGELMANN:** Fair enough.

18 **MR. MacDONALD:** And then she, on a later
19 occasion, corrected me on that.

20 **MR. ENGELMANN:** All right. And what you're
21 saying on Bates page 857 is:

22 "He contacted me directly. He
23 contacted me twice. He contacted me
24 the first time, I would think,
25 something -- something in the area of

1 perhaps a month or six weeks before the
2 settlement was reached."

3 Right? And, sir, we know from this hearing

4 ---

5 **MR. MacDONALD:** It was more ---

6 **MR. ENGELMANN:** --- that the actual
7 settlement was signed off at least on September the 2nd.
8 Maybe it was agreed to shortly before then but we're
9 talking either late August or early September.

10 **MR. MacDONALD:** Yeah.

11 **MR. ENGELMANN:** So if it was a month or six
12 weeks before then, presumably it would have been sometime
13 in July. Does that still ---

14 **MR. MacDONALD:** No, I think he ---

15 **MR. ENGELMANN:** --- accord with your
16 understanding?

17 **MR. MacDONALD:** I know now that my timing
18 estimation was wrong then.

19 **MR. ENGELMANN:** Okay.

20 **MR. MacDONALD:** And I believe there would
21 have been more than six -- well, more like probably three
22 months I guess between the first and second.

23 **MR. ENGELMANN:** Why do you think that now?

24 **MR. MacDONALD:** Because I've learned
25 subsequently that events took place, as far as initially

1 being contacted by Mr. MacDonald, and then the settlement
2 being reached, as you say, in August or September, and
3 those events were more than six weeks apart.

4 **MR. ENGELMANN:** Okay. Well, I mean just --
5 I'm just trying to understand, sir, what information you're
6 referring to that you've learned.

7 Clearly, in 1994 just, you know, within a
8 year of this event, you're thinking that your first call
9 from Malcolm MacDonald was a month or six weeks before the
10 settlement signing.

11 **MR. MacDONALD:** The first call, yeah.
12 That's what appeared to be in this by -- you know, a year
13 later, and I think I was in error because primarily the
14 months of July and August were a time when nothing really
15 was going on on the file, until late August. And so I
16 think that's where my error about six weeks is. It should
17 be doubled.

18 **MR. ENGELMANN:** All right. So you think
19 you're in error because you've read something in documents
20 since?

21 **MR. MacDONALD:** Yes.

22 **MR. ENGELMANN:** And those documents would be
23 her notes or something else?

24 **MR. MacDONALD:** When I was being interviewed
25 in advance of this testimony, you'll recall you pointed out

1 to me certain -- it may have been Heidi's notes, as well as
2 the correspondence from MacDonald, the lawyer, that seemed
3 to suggest that it was earlier than July.

4 **MR. ENGELMANN:** Okay. Well, we'll go
5 through some of what we have here and hopefully we'll be
6 able to glean that.

7 **MR. MacDONALD:** Is your question trying to
8 pin down the context of these two calls?

9 **MR. ENGELMANN:** Well, I'm just trying to
10 understand why he's calling you, first of all. You knew at
11 that point, when he first called you, that he was
12 representing Father MacDonald, correct, by that time?

13 **MR. MacDONALD:** Certainly representing
14 MacDonald, perhaps the Diocese too.

15 **MR. ENGELMANN:** Okay. Perhaps both but ---

16 **MR. MacDONALD:** Yeah.

17 **MR. ENGELMANN:** --- he certainly was
18 involved in representing the priest?

19 **MR. MacDONALD:** Yes, and it was clear to me
20 that he wanted to -- well, clear to me. I thought -- my
21 impression from the call, having known this gentleman as a
22 senior member of the bar, is that he was trying to stay on
23 the high ground in disclosing to the Crown that he was
24 pursuing a civil litigation in the course of a criminal
25 investigation.

1 MR. ENGELMANN: All right.

2 Well, let's just start from -- did you know
3 Malcolm MacDonald ---

4 MR. MacDONALD: Yes.

5 MR. ENGELMANN: --- at the time he called
6 you?

7 MR. MacDONALD: Yes.

8 MR. ENGELMANN: And you knew him
9 professionally?

10 MR. MacDONALD: Yes.

11 MR. ENGELMANN: You knew he'd been a Crown
12 prosecutor before?

13 MR. MacDONALD: I knew of that, yes.

14 MR. ENGELMANN: And you knew he was a
15 federal agent, I believe, at that time -- as a federal
16 prosecutor?

17 MR. MacDONALD: Yes, or just before that
18 time or just after, when the Conservatives were in power.

19 MR. ENGELMANN: All right. And you knew of
20 his political leanings then as well?

21 MR. MacDONALD: Yes, sir.

22 MR. ENGELMANN: All right. And, sir, do you
23 recall -- and if you want to take a look at your statement
24 -- his approach when he spoke to you, and you've got a note
25 about this.

1 Again, I'm looking at the OPP statement,
2 which is Exhibit 1233. And, again, this is -- I'm looking
3 -- it's page 28 of your statement if that helps:

4 "He contacted me about a month before
5 apparently the settlement had been
6 finalized, to tell me he had been -- he
7 was negotiating with this person."

8 I'm not sure, sir, if you're referring to
9 the second meeting there -- the second contact or the first
10 on -- it's Bates page 862.

11 **MR. MacDONALD:** He had more editorializing
12 in the second call that was made right after Heidi told me
13 that the resolution had been reached; right after my first
14 meeting with Lucien Brunet and Heidi in late August or
15 early September.

16 **MR. ENGELMANN:** Okay, so the second call
17 wasn't until then?

18 **MR. MacDONALD:** Right.

19 **MR. ENGELMANN:** All right.

20 **THE COMMISSIONER:** Let's just go back to
21 Angus Malcolm MacDonald. Did you know him on a personal
22 level?

23 **MR. MacDONALD:** No, just on a professional
24 level, but I knew him well on a professional level. We
25 dealt with each other, you know, two or three times a week,

1 I bet.

2 **THE COMMISSIONER:** Okay.

3 **MR. MacDONALD:** Yeah.

4 **MR. ENGELMANN:** And, sir, how did you
5 respond when he called you the first time and, you know --
6 I'm just trying to understand why he'd be calling you as
7 the Crown prosecutor to tell you that he's negotiating with
8 this complainant while his client is a suspect in a
9 criminal investigation?

10 **MR. MacDONALD:** I thought it's because he
11 knew that whereas this was lawful, it was still potentially
12 -- could have potential ramifications on the course of the
13 criminal investigation, so I had the sense that he was
14 trying to give the Crown, as he had already given the
15 police, notice that he was doing this and he wanted to do
16 it in a -- I thought, again, that the impression was that
17 he was trying to do this in an open fashion.

18 **MR. ENGELMANN:** Was he suggesting to you at
19 all that the fact that he was discussing or trying to
20 negotiate with the complainant was in any way a suggestion
21 that the complainant was motivated by money or greed, as
22 far as pursuing these charges?

23 **MR. MacDONALD:** The first time he told me
24 that the -- I believe his words were that the complainant
25 had cause to be angry at the Church for not supporting him

1 -- the complainant and his mom, the complainant's mom years
2 ago, and it was in that context that the priest -- and I
3 thought the -- I don't think he said Diocese but I presume
4 the priest and the Diocese were inclined to negotiate with
5 him because they felt some -- he had been wronged generally
6 by the parish or by a priest. Certainly, they didn't
7 concede that the priest was -- you know, had committed a
8 tort. His comment was more in the context of, "The fellow
9 has an axe to grind and we're going to settle with him as a
10 result of this axe that he was grinding".

11 **MR. ENGELMANN:** All right.

12 Well, on those two pages I referred you to
13 earlier, 862 and 863 -- and I believe we may be talking
14 about the first call and not the second call, just because
15 of what you told us on timing.

16 You say, for example, at the bottom of 862:
17 "He said I just want you to know that
18 from our perspective it's unfounded but
19 we're negotiating with this fellow to
20 settle with him."

21 And he called it a nuisance claim or used
22 words to that effect.

23 **MR. MacDONALD:** No, that was the second call
24 where he was much more -- he'd changed his tune. I recall
25 that the first call was a short conversation ---

1 **MR. ENGELMANN:** All right.

2 **MR. MacDONALD:** --- where he gave me notice
3 of the resolution discussions, gave a one-line explanation
4 for well, you know, we're settling it because of a bigger
5 picture about something that the Church or parish had not
6 done to support his Mom years ago.

7 But it was in the second one where he
8 editorialized more so on the merits of the case and the
9 fact that it was just a nuisance settlement.

10 **MR. ENGELMANN:** All right.

11 And, sir, when you were advised, well, for
12 the first time when -- that there are settlement
13 negotiations going on between Malcolm MacDonald and Mr.
14 Silmsler, do you have a sense as to what was going on with
15 Constable Sebalj's investigation at that stage?

16 **MR. MacDONALD:** She was doing -- there were
17 a couple of components to it. On the one hand, she was
18 sort of sitting to watch and see how or what would
19 transpire from the civil discussions.

20 And, secondly, she was following up with
21 some collateral information that I'd asked her -- or that
22 she of her own initiative had thought about exploring --
23 attempted to explore.

24 **MR. ENGELMANN:** All right.

25 You make a reference -- and I'm looking at

1 Bates page 867, which is page 33 of your statement. It was
2 a question from Detective Inspector Smith, near the bottom
3 of the page, where he asks you:

4 "Did you have further meetings with
5 Constable Sebalj? Did she bring to
6 your attention that there'd been a
7 settlement?"

8 And you said:

9 "She contacted me after the call I had
10 from Malcolm to say she contacted me on
11 it seemed on the eve of the
12 settlement..."

13 **MR. MacDONALD:** Yeah, I thought she
14 contacted me before Malcolm.

15 **MR. ENGELMANN:** All right.

16 **MR. MacDONALD:** I may be wrong on that.

17 **MR. ENGELMANN:** All right.

18 "...to say her investigation..."

19 I'm on the next page:

20 "...had come up with some indication
21 that there seemed to have been -- that
22 the target of the investigation Father
23 MacDonald had or may have had, you
24 know, homosexual tendencies, this was
25 from someone else who was reluctant I

1 believe to get -- to assist in the
2 police investigation, but they did say
3 that he had homosexual contact with the
4 priest. This was the first time in
5 many contacts I'd had with Constable
6 Sebalj where it seemed to be where
7 there was something in favour of the
8 complainant as opposed to against his
9 credibility."

10 Do you see that?

11 **MR. MacDONALD:** Yes.

12 **MR. ENGELMANN:** Do you recall this at all,
13 sir?

14 **MR. MacDONALD:** Yeah, there were -- four
15 different names were provided by Heidi. I think that the
16 complainant provided Heidi with two or three or -- I don't
17 believe all the names but about two or three of them.

18 Early on, Heidi determined that two of those
19 named persons did not provide corroborative evidence. One
20 provided non-corroborative evidence. And then she told me
21 later on -- now, either before that police college trip or
22 in August. I just forget which.

23 **MR. ENGELMANN:** All right. Well, in this
24 statement you're suggesting that she's telling you
25 something on the eve of the settlement.

1 MR. MacDONALD: Right.

2 MR. ENGELMANN: Do you see that?

3 MR. MacDONALD: Yes.

4 MR. ENGELMANN: And she's saying she's
5 finally got something that appears to be I guess
6 corroborative of ---

7 MR. MacDONALD: That was two other names
8 that either the complainant had -- I believe that these
9 were two of the names that she'd come up with.

10 MR. ENGELMANN: All right.

11 MR. MacDONALD: One person ---

12 MR. ENGELMANN: We'll not use the names
13 here, but ---

14 MR. MacDONALD: Okay.

15 MR. ENGELMANN: --- these were names of two
16 alleged victims that had come forward?

17 MR. MacDONALD: Two persons that she heard
18 may have information about being victims themselves or
19 having knowledge of Mr. Silmsen -- am I allowed to say his
20 name?

21 MR. ENGELMANN: Oh, his name, yes.

22 THE COMMISSIONER: Sure. Sure.

23 MR. MacDONALD: Having been abused.

24 So one of those two names caused suspicion
25 to grow in Heidi's mind because the individual said, "You

1 know, I don't want to get involved. There's something
2 there but I don't want to get involved."

3 And the second person said, "I don't want to
4 be a complainant, however, I can confirm that I was..." --
5 I think he said he was likewise abused by the priest.

6 So the case was starting to build again as a
7 result of this information combined with the resolution
8 being reached.

9 **MR. ENGELMANN:** And she's indicating this to
10 you on the eve of the settlement, according to your
11 statement?

12 **MR. MacDONALD:** Yeah, it -- I think it was
13 in August but it might have been before she left for police
14 college.

15 **MR. ENGELMANN:** Would you remember those
16 names if I showed you a list, sir?

17 **MR. MacDONALD:** I think I remember -- I do
18 remember one for sure.

19 **MR. ENGELMANN:** All right.

20 If we could -- if the witness could be shown
21 the name of C-3 and the name of C-56.

22 **THE COMMISSIONER:** While we're doing that,
23 Mr. Engelmann, what I propose to do is take a break at
24 around 4:00 o'clock and then sit till around 5:00.

25 Would that be okay with you, Mr. MacDonald?

1 **MR. MacDONALD:** As late as you want, sir.

2 **THE COMMISSIONER:** Well, tonight I have an
3 engagement so I'll have to ---

4 **MR. MacDONALD:** Thank you.

5 **THE COMMISSIONER:** But tomorrow night, if
6 you're still here, we'll finish you off tomorrow night.

7 **MR. MacDONALD:** Thank you.

8 **THE REGISTRAR:** C-3 and C?

9 **MR. ENGELMANN:** Fifty-six (56).

10 **MR. MacDONALD:** C-3, I'm not sure.

11 **MR. ENGELMANN:** All right.

12 If you take a look at C-56.

13 **MR. MacDONALD:** I thought it was another
14 name.

15 **MR. ENGELMANN:** All right.

16 But, in any event, what you recall is ---

17 **MR. MacDONALD:** I don't recall.

18 **MR. ENGELMANN:** Is that she's got the names
19 of two alleged victims. One who doesn't want to be a
20 complainant but is willing to testify ---

21 **MR. MacDONALD:** Yes.

22 **MR. ENGELMANN:** --- and the other who says
23 he was abused but doesn't want to get involved?

24 **MR. MacDONALD:** Yes.

25 **MR. ENGELMANN:** All right.

1 **MR. MacDONALD:** So suspicion's starting to
2 mount again.

3 **MR. ENGELMANN:** And you say that, at least
4 up until this point, she hadn't provided you with anything
5 in support of his claim?

6 **MR. MacDONALD:** That's right. Credibility
7 problems just seemed to be growing up until that point when
8 Heidi -- and Luc Brunet is now in the loop and they both
9 think, wait a second, something smells in Copenhagen, is
10 it, and then we thought now that the settlement's been
11 reached -- and that's passed the complainant and we can get
12 this criminal investigation back on board.

13 **MR. ENGELMANN:** Well, did you at any point
14 in the meetings you had, the 7 to 10 meetings with
15 Constable Sebalj, did you ever suggest to her that she
16 interview Father MacDonald?

17 **MR. MacDONALD:** No, I don't recall. I don't
18 believe I did though.

19 **MR. ENGELMANN:** All right.

20 **MR. MacDONALD:** She had nothing to interview
21 him on.

22 **MR. ENGELMANN:** That was your view at the
23 time?

24 **MR. MacDONALD:** Yeah, when you interview a
25 complainant -- rather a suspect, you want to make sure you

1 have something that you can pin him on or her on. She had
2 nothing.

3 **MR. ENGELMANN:** All right.

4 Well, apparently there were a couple things
5 that had arisen just, as you say, on the eve of the
6 settlement though.

7 **MR. MacDONALD:** Right, but we're talking
8 about in the months -- the previous -- she didn't have
9 anything.

10 **MR. ENGELMANN:** Okay. Fair enough.

11 And at Bates page 869 -- and I assume this
12 is now at or around the time of the settlement -- you're
13 saying:

14 "By this point, he doesn't want to
15 speak to the police anymore. I believe
16 first he might have said to them 'Look,
17 I'm in no rush'. He told them actually
18 more than once. Sometimes he told them
19 to hurry up, get this over with, other
20 times 'I'm in no rush'."

21 So she was getting a lot of different vibes
22 from him in terms of the timing issue?

23 **MR. MacDONALD:** She was getting mixed
24 messages in a number of contexts.

25 **MR. ENGELMANN:** All right. So presumably

1 you're getting that information from her directly?

2 **MR. MacDONALD:** Correct.

3 **MR. ENGELMANN:** And let's be clear, you
4 never meet with the complainant?

5 **MR. MacDONALD:** Correct.

6 **MR. ENGELMANN:** So your information is
7 either from her or towards the end of your meetings perhaps
8 Mr. Brunet -- or Staff Sergeant Brunet?

9 **MR. MacDONALD:** Correct. I may have dealt
10 with Mr. Silmsler in another context. I'll just leave it at
11 that. Okay?

12 **MR. ENGELMANN:** All right. But you had
13 nothing to do -- you didn't meet him with respect to ---

14 **MR. MacDONALD:** No.

15 **MR. ENGELMANN:** --- investigation of these
16 claims?

17 **MR. MacDONALD:** No.

18 **MR. ENGELMANN:** And then you say, towards
19 the bottom of that page:

20 "Constable Sebalj contacted me. She's
21 basically saying they've come up,
22 they're doing the settlement right now
23 or as we speak or yesterday or tomorrow
24 or something, and I just learned this,
25 this information that the priest may

1 have had homosexual tendencies..."

2 So this is this recent information again?

3 **MR. MacDONALD:** Yes.

4 **MR. ENGELMANN:** "...and I asked her if
5 this was the point where she would
6 bring the charges. She said no, it
7 still wasn't. That was a development.
8 Next step is she confirms to me -- I
9 heard through the police either she or
10 Luc Brunet -- I heard before I did
11 Malcolm MacDonald that the settlement
12 had been reached."

13 All right?

14 **MR. MacDONALD:** Yes, sir.

15 **MR. ENGELMANN:** And so that's I guess the
16 point when you say it a second time that Malcolm phones
17 you?

18 **MR. MacDONALD:** Yes, sir.

19 **MR. ENGELMANN:** So you would have heard from
20 either Constable Sebalj or Staff Sergeant Brunet that
21 there's a settlement, and it's shortly after that that
22 Malcolm MacDonald calls you?

23 **MR. MacDONALD:** I have the impression that
24 Malcolm called me shortly after the police informed me.

25 **MR. ENGELMANN:** All right. And so that

1 presumably was at the end of August or the beginning of
2 September.

3 **MR. MacDONALD:** Yes, sir.

4 **MR. ENGELMANN:** All right. And so he's
5 calling you and again you've got a reference to him saying
6 to you, "We've settled with the complainant. He's taken
7 the settlement from us." Again he says it's a nuisance
8 complaint, there's nothing to it:

9 "I believe he said to me that second
10 time he could have easily discredited
11 him in a criminal trial. In the
12 context of it being a nuisance
13 complaint, they'd settle and give this
14 guy some money for counselling. He put
15 the spin on it, giving him some money
16 for counselling. It sounded to me like
17 he was saying, 'It's charity we're
18 giving this poor man.'"

19 And you say on the following page, "I felt
20 uncomfortable about the second call," and I want to ask you
21 why it is you felt uncomfortable he's phoning you again
22 about this matter.

23 **MR. MacDONALD:** The tenor of his
24 conversation was different as between the first and second
25 calls. In the first call it was -- I don't know if I told

1 him, "As you know, the criminal case will continue." I
2 probably didn't do it in that many words because in the
3 first call it was evident from the tone of our conversation
4 that the criminal case would continue while the civil
5 discussions were going on.

6 And so that didn't concern me, but it
7 concerned me -- the tenor of his second call was more
8 dismissive of the complainant's believability, and also
9 left me with the impression that he may be of the view that
10 this would also end the criminal case. So I specifically
11 told him, "As you know, this will not end the criminal
12 case," because I wanted to make it very clear at this
13 point, now that I was sensing this new attitude.

14 **MR. ENGELMANN:** All right. Well, were you
15 suspicious about his reasons for contacting you? You say
16 you felt uncomfortable.

17 **MR. MacDONALD:** I thought that he was
18 presuming that as a result of the settlement that we would
19 -- the police and the Crown would no longer have an
20 interest in the matter.

21 **MR. ENGELMANN:** Right.

22 **MR. MacDONALD:** And I wanted to make it
23 clear to him we would.

24 No, I didn't suspect that he'd obstructed
25 justice. That hadn't crossed my mind. But I thought that

1 he was just being a little bit too optimistic and I wanted
2 to make the -- set the record with him straight.

3 **MR. ENGELMANN:** All right. Would it be fair
4 to say he was giving you an indication that he thought the
5 criminal investigation would be stopped by the civil
6 settlement?

7 **MR. MacDONALD:** I had the sense -- I now
8 know wrongly, but I had the sense from the conversation
9 that he was hopeful that as a result of the civil
10 settlement that we would no longer be interested in
11 prosecuting or investigating.

12 **MR. ENGELMANN:** All right.

13 Now, aside from Malcolm MacDonald, at or
14 about the time of the settlement, did you have any contact
15 from anyone else representing the Diocese?

16 **MR. MacDONALD:** Yes.

17 **MR. ENGELMANN:** And who was that?

18 **MR. MacDONALD:** Jacques Leduc, another
19 member of the local Law Association, contacted me within a
20 day or days of these events.

21 **MR. ENGELMANN:** All right. Who contacted
22 you first, Malcolm MacDonald or Jacques Leduc?

23 **MR. MacDONALD:** Malcolm MacDonald.

24 **MR. ENGELMANN:** So the second call from him
25 comes before the first call from Mr. Leduc -- or the first

1 contact from Mr. Leduc?

2 MR. MacDONALD: I believe so.

3 MR. ENGELMANN: All right. And the contact
4 from Mr. Leduc, was that an in-person contact or phone
5 call?

6 MR. MacDONALD: The contacts with MacDonald
7 -- the two contacts with MacDonald and the Leduc contact
8 were all by telephone.

9 MR. ENGELMANN: All right. And did you know
10 at the time that Mr. Leduc was involved in the case?

11 MR. MacDONALD: No. I had no real -- I had
12 no idea that he was involved until he told me he was
13 involved in that call.

14 MR. ENGELMANN: Did that surprise you?

15 MR. MacDONALD: Not really, because I -- it
16 seems to me I knew he'd acted for the Diocese in other
17 stuff; real estate and other things.

18 MR. ENGELMANN: All right. Did he tell you
19 why he was contacting you?

20 MR. MacDONALD: Yes. He said, "I'm on for
21 the Diocese," and that -- I had the impression up till that
22 point that Malcolm was on for the Diocese too, but that's
23 just an error on my part.

24 MR. ENGELMANN: All right. And did you know
25 him?

1 **MR. MacDONALD:** Yes. I knew him
2 professionally. I didn't know him socially but I knew him
3 professionally.

4 **MR. ENGELMANN:** All right, and did you ever
5 have professional dealings with him?

6 **MR. MacDONALD:** The dealings were more so in
7 the context of, well, infrequent professional dealings and
8 -- infrequent but probably half a dozen times a year on
9 criminal cases, maybe more; half a dozen times a year in
10 his role as a member of the executive of the local Law
11 Association.

12 **MR. ENGELMANN:** All right. So he wasn't
13 mainly a criminal lawyer like Malcolm MacDonald?

14 **MR. MacDONALD:** No. No, but he did
15 occasionally take a straightforward criminal file.

16 **MR. ENGELMANN:** All right. So now and then
17 there would be some contact by him as a criminal defence
18 lawyer?

19 **MR. MacDONALD:** In the normal course, yeah.

20 **MR. ENGELMANN:** All right, okay.

21 And I'm just a little unclear as to why he's
22 calling you. I mean we've got these two calls from Malcolm
23 MacDonald. Now he's calling you saying, "I'm representing
24 the Diocese."

25 **MR. MacDONALD:** Yeah. He -- I -- the tenor

1 of his call was akin to the tenor of Malcolm MacDonald's
2 first call; "I'm trying to be upfront with you, Mr. Crown.
3 We've reached a resolution." He wasn't derogatory to the
4 complainant but he sort of suggested it's -- this is a, you
5 know, a nuisance claim. So it was -- it -- well, it was
6 somewhat derogatory but not -- it didn't have the same edge
7 that Malcolm's second call did.

8 **MR. ENGELMANN:** All right.

9 And did he explain why he thought it was
10 important for him to call you about this matter?

11 **MR. MacDONALD:** No. I thought that -- I
12 thought again that he had the same motive that Malcolm had
13 the first time, but because of the call I'd received from
14 Malcolm, and not so much by the tenor of -- or words spoken
15 by Leduc, I decided to give Leduc the caution as well that
16 the criminal case would continue. And both he and Malcolm,
17 after I gave them that caution, said, "Oh yes, yes, I know.
18 We understand."

19 **MR. ENGELMANN:** All right.

20 **MR. MacDONALD:** Or, "I understand."

21 **MR. ENGELMANN:** There's no reference to your
22 speaking to Leduc in this long statement to the OPP that I
23 could find.

24 **MR. MacDONALD:** Is there in the '98
25 statement?

1 **MR. ENGELMANN:** I'm not sure, sir, but in
2 the '94 statement there isn't. Are you sure that he
3 actually spoke with you about this matter?

4 **MR. MacDONALD:** I'm certain.

5 **MR. ENGELMANN:** All right. And when he
6 testified here he told us that you had discussed the matter
7 but that he met with you at the courthouse and at that time
8 told you he was acting for the Diocese and that he was
9 about to settle the civil claim with Silmser. He also said
10 he advised you of the circumstances of the settlement, that
11 it was happening, and that your response was essentially,
12 "Well, do what you have to do."

13 **MR. MacDONALD:** No.

14 **MS. McINTOSH:** If I can interrupt,
15 Mr. Commissioner.

16 **THE COMMISSIONER:** Just a second,
17 Mr. Engelmann; Ms. McIntosh.

18 **MS. McINTOSH:** I think that there was more
19 that Mr. Leduc added, certainly in cross-examination, about
20 what transpired in that conversation, so I don't think it's
21 fair to end right there. I think that's the wrong premise
22 to put to the witness.

23 **THE COMMISSIONER:** Okay. Mr. Engelmann?

24 **MS. McINTOSH:** Mr. Leduc has essentially
25 confirmed in cross-examination what Mr. MacDonald just

1 said, which is that Mr. Leduc acknowledged that he'd been
2 cautioned by Mr. MacDonald that the criminal proceeding
3 wouldn't be over, and he acknowledged that.

4 **THE COMMISSIONER:** Mr. Engelmann, care to
5 comment?

6 **MR. ENGELMANN:** I'm sorry?

7 **THE COMMISSIONER:** Care to comment?

8 **MR. ENGELMANN:** I'm not suggesting that he
9 didn't say that, sir.

10 **THE COMMISSIONER:** Right.

11 **MR. ENGELMANN:** I was asking a question.
12 One, I wanted to confirm whether or not the witness
13 actually remembers discussing this matter with Mr. Leduc;
14 and secondly, whether he might have been mistaken about
15 whether it was a phone call or an in-person meeting at the
16 courthouse.

17 **MR. MacDONALD:** Mr. Leduc is mistaken.

18 **MR. ENGELMANN:** All right. You're quite
19 sure he phoned you?

20 **MR. MacDONALD:** Yes. He spoke to me after -
21 - you know, in October'ish, and made reference in the
22 courthouse hall in passing about that, but by that point it
23 was a one-line comment by him and I wasn't making any
24 responses to he or Malcolm on the topic.

25 **MR. ENGELMANN:** All right.

1 **THE COMMISSIONER:** Let's take the afternoon
2 break.

3 **MR. ENGELMANN:** All right.

4 **THE REGISTRAR:** Order; all rise. À l'ordre;
5 veuillez vous lever.

6 This hearing will resume at 4:20 p.m.

7 --- Upon recessing at 4:02 p.m./

8 L'audience est suspendue à 16h02

9 --- Upon resuming at 4:18 p.m./

10 L'audience est reprise à 16h18

11 **THE REGISTRAR:** Order; all rise. À l'ordre;
12 veuillez vous lever.

13 This hearing is now resumed. Please be
14 seated. Veuillez vous asseoir.

15 **MURRAY MacDONALD, Resumed/Sous le même serment:**

16 **THE COMMISSIONER:** Go ahead.

17 **MR. ENGELMANN:** Thank you, sir.

18 --- **EXAMINATION IN-CHIEF BY/INTERROGATOIRE IN-CHEF PAR**

19 **MR. ENGELMANN (cont'd/suite):**

20 **MR. ENGELMANN:** Sir, I was asking you about
21 the contact with Mr. Leduc, and you've confirmed that
22 you're quite certain that it happened, and that it was a
23 phone call.

24 And Ms. MacIntosh interjected briefly, and I
25 just want to confirm that in cross-examination, aside from

1 the -- to me, was "to do what you have to do," he
2 acknowledged, in fact, you telling him that a criminal
3 process could continue, all right, notwithstanding a civil
4 settlement?

5 MR. MacDONALD: I told him it would
6 continue.

7 MR. ENGELMANN: All right. It will? Okay.

8 MR. MacDONALD: It will, yes. Neither one
9 of them were surprised by that response.

10 MR. ENGELMANN: All right.

11 THE COMMISSIONER: I'm sorry. I'm sorry;
12 when was this conversation? This was after ---

13 MR. MacDONALD: I think it was just on
14 the -- just after Malcolm had contacted me.

15 THE COMMISSIONER: No, but before or after
16 Mr. Silmsler had gone to the police station and said, "I
17 don't want to continue"?

18 MR. ENGELMANN: Sir, that would have
19 been -- that was in late September.

20 THE COMMISSIONER: M'hm.

21 MR. ENGELMANN: The settlement was in early
22 September.

23 THE COMMISSIONER: Oh, I understand that,
24 but I just want to make it clear ---

25 MR. MacDONALD: Early September.

1 **THE COMMISSIONER:** So you're saying these
2 people -- you're saying to Mr. Leduc, "This prosecution
3 will go on."

4 **MR. ENGELMANN:** "This investigation will go
5 on."

6 **THE COMMISSIONER:** Oh, "The investigation
7 will go on."

8 **MR. MacDONALD:** Yes, sir.

9 **THE COMMISSIONER:** But you knew that Silmser
10 didn't want to cooperate any more?

11 **MR. MacDONALD:** I ---

12 **THE COMMISSIONER:** Obviously.

13 **MR. MacDONALD:** I'd known that from
14 Heidi ---

15 **THE COMMISSIONER:** Yes.

16 **MR. MacDONALD:** --- who had heard from, I
17 think, Mr. Silmser's lawyer.

18 **THE COMMISSIONER:** Well, no -- I don't know.
19 You take it.

20 **MR. ENGELMANN:** Yes, let's be careful on
21 that.

22 But, again, just to get our timing correct,
23 what you've told us is that you find out from either Sebalj
24 or Brunet that there's a settlement, you get a second call
25 from Malcolm MacDonald, so this would be shortly after the

1 settlement ---

2 MR. MacDONALD: Or on the eve of it, it's
3 either "We've settled," or "about to settle," one or the
4 other.

5 MR. ENGELMANN: All right. And then
6 Mr. Leduc's call comes after that?

7 MR. MacDONALD: Right.

8 MR. ENGELMANN: And is that before or after
9 the settlement?

10 MR. MacDONALD: I thought that his was -- I
11 think it was after.

12 MR. ENGELMANN: All right. And you had no
13 knowledge of his involvement until that time? Mr. Leduc?

14 MR. MacDONALD: No.

15 MR. ENGELMANN: Okay. Now, you told us that
16 the second call from Malcolm MacDonald made you feel
17 uncomfortable, or ---

18 MR. MacDONALD: Yes.

19 MR. ENGELMANN: --- perhaps somewhat
20 suspicious?

21 MR. MacDONALD: The tenor had changed.

22 MR. ENGELMANN: Right. And then you get a
23 call from Mr. Leduc -- not that you were expecting one?

24 MR. MacDONALD: No.

25 MR. ENGELMANN: And he's talking to you

1 about civil settlement, same complainant? Are you more or
2 less comfortable when you get that second call from another
3 lawyer?

4 **MR. MacDONALD:** Well, his call was in the
5 same spirit, I thought, of Mr. MacDonald's first call,
6 which was to be on the high ground in giving the Crown
7 notice that a civil resolution had taken place in the
8 course of a criminal -- or parallel to a criminal
9 investigation.

10 But, because of the call I received from
11 Malcolm MacDonald a second time where that -- he had the
12 impression that he thought this would end everything, I
13 thought that I would remind Mr. Leduc, as well as I had Mr.
14 MacDonald, and so I gave -- I gave them both the caution.

15 **MR. ENGELMANN:** Did either of these lawyers
16 tell you that there was any civil action going at the time?

17 **MR. MacDONALD:** Whether the Notice of Action
18 had been filed or not? I didn't know.

19 **MR. ENGELMANN:** All right. And you didn't
20 ask?

21 **MR. MacDONALD:** I didn't ask, no.

22 **DEP. COMM. LEWIS:** All right.

23 **MR. MacDONALD:** I don't think you need a
24 Notice of Action to conduct civil discussions, but
25 I -- it's been a while since I did civil law.

1 **MR. ENGELMANN:** All right. And were you
2 aware, sir, that prior to the actual time of settlement Mr.
3 Silmsner was unrepresented? Had either of them told you
4 that?

5 **MR. MacDONALD:** No, I didn't know that.

6 **MR. ENGELMANN:** All right. And did you ever
7 ask either of them to look at the wording of the settlement
8 agreement ---

9 **MR. MacDONALD:** No, sir.

10 **MR. ENGELMANN:** --- to satisfy yourself that
11 it was purely a civil settlement?

12 **MR. MacDONALD:** No. I had no reason to
13 suspect that there was an illegal clause in there.

14 **MR. ENGELMANN:** All right. I just want to
15 show you briefly, if I can, a statement or an interview
16 report that was taken by Detective Inspector Smith of
17 Malcolm MacDonald.

18 **MR. MacDONALD:** I know ---

19 **MR. ENGELMANN:** This would have been a few
20 months after yours, and I think you would have seen this
21 document. It's Exhibit 863.

22 **MR. MacDONALD:** I disagree vigorously with
23 the contents of that note.

24 **MR. ENGELMANN:** Okay. Let me just take you
25 to the page, so that everybody knows what you're

1 disagreeing about, okay?

2 MR. ENGELMANN: And, sir, just on the Bates
3 page, it's Exhibit 863 and it's Bates page 944 or page 18.

4 MR. MacDONALD: I think it will come up here
5 or ---

6 MR. ENGELMANN: Yes, it will. You're going
7 to have a hard copy of it as well, but it'll come up on the
8 screen.

9 MR. MacDONALD: Thank you.

10 MR. ENGELMANN: The Document Number of
11 Exhibit 863 is 714897.

12 And, sir, just so we're clear, he's
13 interviewed in October '94, and he tells the OPP that he
14 went to see you and discussed the settlement with you, and
15 he said he indicated to you that the settlement would cover
16 the totality of the matter, both civil and criminal?

17 THE COMMISSIONER: I'm sorry, where are you
18 again, page 18?

19 MR. ENGELMANN: Sir, I'm paraphrasing. If
20 we look at that page ---

21 THE COMMISSIONER: Page 18?

22 MR. ENGELMANN: Yes.

23 THE COMMISSIONER: M'hm?

24 MR. ENGELMANN: And just to read then, he
25 says:

1 "I went to see Murray MacDonald,
2 Crown attorney, told him what the
3 situation was."

4 So he's suggesting he actually went to see
5 you ---

6 **MR. MacDONALD:** No.

7 **MR. ENGELMANN:** --- to start with.

8 **MR. MacDONALD:** It was a phone call.

9 **MR. ENGELMANN:** All right.

10 That the Church was thinking of -- he's
11 asking for money, wanted them to pay it off:

12 "I explained the whole situation to
13 him and I said, 'I want to put a
14 full disclosure to you,' and he
15 said to me, virtually, 'Well, that's
16 fine; do what you want to do,' and
17 he doesn't perceive it that's, you
18 know, almost implying we're happy to
19 put it.

20 Did you indicate at that time that it
21 was a civil matter that you were
22 settling, or the totality?

23 The totality of it.

24 Yes. Even the criminal end of it?

25 Yes. Yes.

1 And what did he say to that? He said
2 to -- 'Well, fine. If they -- he -- if
3 everybody's happy, I'm happy' sort of
4 thing."

5 All right? So this is Malcolm MacDonald
6 telling the OPP in October of '94 that he went to see you
7 and he explained that the settlement was going to cover
8 criminal allegations and a civil claim.

9 And, sir, what do you say about this?

10 **MR. MacDONALD:** This interview was taken
11 when Mr. MacDonald was trying to justify an illegal clause
12 that he'd inserted in the ---

13 **MR. ENGELMANN:** Well, this is taken in
14 the fall of 1994, during the course of Detective Inspector
15 Smith's investigations, and we know that you're a person of
16 interest, for whatever reason ---

17 **MR. MacDONALD:** No, but I'm just saying, Mr.
18 MacDonald -- by that point, I understand Detective
19 Smith has discovered the illegal clause; is that right?

20 **MR. ENGELMANN:** Oh, that -- that's long
21 before.

22 **THE COMMISSIONER:** Oh, yes.

23 **MR. ENGELMANN:** That's -- that's back
24 in -- that's back in January where that clause becomes
25 public ---

1 MR. MacDONALD: Yes.

2 MR. ENGELMANN: --- in the community.

3 MR. MacDONALD: And I ---

4 MR. ENGELMANN: So he's investigating an
5 attempt obstruct justice of the -- certainly with the
6 lawyers involved, if not others?

7 MR. MacDONALD: Yes. And I mention this
8 because that's the context in which Mr. MacDonald gives
9 this answer.

10 He's either egregiously in error or he's
11 lying. He's lying in the context or an error in the
12 context with respect to suggesting that I'd be happy to see
13 this put away.

14 I was particularly circumspect in my
15 language in both telephone conversations with him, and the
16 tenor of the first conversation, if I didn't tell him that
17 the case would continue, certainly the gist of our
18 conversation presumed that.

19 And, secondly, when -- the second call, when
20 his tenor was changed, I definitely told him that the
21 criminal case would continue, and he said, "Yes, yes, I
22 understand," so this is diametrically opposed to what I
23 know happened.

24 MR. ENGELMANN: But, sir, at the time, in
25 September, after the settlement, after the police advised

1 you of the settlement, is it not your view, within days,
2 that in fact the criminal investigation should not
3 continue?

4 **MR. MacDONALD:** Yes, but that's for a
5 different -- that's because there's a problem with no
6 complainant.

7 **MR. ENGELMANN:** Fair enough. But the no
8 complainant problem arises from this settlement?

9 **MR. MacDONALD:** Well, we understood -- and
10 that's why on two occasions, I sent Heidi and/or Luc back
11 to speak to the man, to tell him, "You don't have to -- now
12 that you've reached your civil settlement, we intend and
13 are interested in continuing." And, frankly, as a -- you
14 know, in efforts to put a criminal case together I thought,
15 okay, we've got this past us and now we can show that
16 despite the fact that he took a civil settlement he still
17 was inclined to proceed criminally.

18 I didn't presume that he, as a result of the
19 settlement, would feel he could no longer and would no
20 longer cooperate.

21 **MR. ENGELMANN:** And, sir, just to go back to
22 your statement from July -- that's Exhibit 1233 and this is
23 at Bates page 857 which is page 23 -- you seem to be
24 indicating that you're aware of direct contact between
25 Malcolm MacDonald and the complainant. It's about seven or

1 eight lines down.

2 So just getting back to an earlier question
3 I had, sir, were you not advised that Malcolm MacDonald was
4 dealing directly with the complainant with respect to these
5 negotiations?

6 **MR. MacDONALD:** From my extensive experience
7 with civil resolutions during my articles, and I say that
8 with tongue in cheek, on the occasions when I did draft
9 minutes of settlement, lawyers were always involved and so
10 I presumed that a lawyer would have been in play by this
11 point. It was an error on my part just because that's what
12 I thought the norm to be.

13 **MR. ENGELMANN:** And you may be right that it
14 is the norm but in this case it wasn't?

15 **MR. MacDONALD:** I didn't know that. Minutes
16 of settlement with a person who's not represented I thought
17 it had to go to a lawyer for confirmation; an independent
18 opinion.

19 **MR. ENGELMANN:** All right.

20 Now, sir, at the same time as the police
21 were telling you about the settlement in early September,
22 are they not also telling you that they've received a
23 direction from Mr. Silmsner ---

24 **MR. MacDONALD:** From his lawyer.

25 **MR. ENGELMANN:** From his lawyer?

1 MR. MacDONALD: Yeah.

2 MR. ENGELMANN: That he doesn't want to
3 proceed?

4 MR. MacDONALD: Yeah, apparently it wasn't
5 his lawyer but I thought Mr. Adams was his lawyer. That's
6 the way he was presented to me.

7 MR. ENGELMANN: All right. He was his
8 lawyer for the purposes of the independent legal advice.

9 MR. MacDONALD: Just that piece. I've
10 learned that ---

11 MR. ENGELMANN: At his settlement?

12 MR. MacDONALD: I've learned that since.

13 MR. ENGELMANN: And, sir, was it not clear
14 to you as a result of information you received from the
15 police that his decision to withdraw his complaint was tied
16 to the settlement?

17 MR. MacDONALD: Yeah.

18 MR. ENGELMANN: That was clear, wasn't it?

19 MR. MacDONALD: Yeah, that was clear and I
20 presumed he'd made up his mind that he didn't -- now that
21 he got his money that he wasn't interested in proceeding
22 with the criminal case any further or, conversely, that he
23 felt that because of the civil settlement the police would
24 no longer be interested.

25 And so that's why I sent the officers back

1 to confirm to the man that he didn't -- that he was
2 presuming wrongly if he thought we weren't interested in
3 continuing.

4 **MR. ENGELMANN:** All right.

5 And there is a letter and it's Exhibit 300,
6 Document Number 101559.

7 **MR. MacDONALD:** Is that the two- or three-
8 liner from Mr. Adams?

9 **MR. ENGELMANN:** This is a letter from Mr.
10 Brunet to yourself.

11 **THE COMMISSIONER:** I can look at it on the
12 screen there.

13 **(SHORT PAUSE/COURTE PAUSE)**

14 **THE COMMISSIONER:** Exhibit 300?

15 **MR. ENGELMANN:** All right.

16 And I'll come back to the conversation you
17 have on the 8th, but he's writing to you on the 9th. He's
18 telling you he's received a letter on the 3rd from Angus
19 Malcolm MacDonald and that's the priest's lawyer, right?

20 **MR. MacDONALD:** Right.

21 **MR. ENGELMANN:** And attached to his letter
22 was a statement from Mr. Silmsler stating he received a
23 civil settlement to his satisfaction, received independent
24 legal advice before accepting it, and advised that he no
25 longer wished to proceed further with criminal charges.

1 **MR. MacDONALD:** Yeah, I thought that was the
2 Sean Adams letter.

3 **MR. ENGELMANN:** All right. And clearly,
4 sir, there's a tie-in between the settlement and his not
5 wanting to proceed. Fair enough?

6 **MR. MacDONALD:** A tie-in? I don't know how
7 ---

8 **MR. ENGELMANN:** A tie-in between --

9 **MR. MacDONALD:** A tie, yes.

10 **MR. ENGELMANN:** Yeah, all right. And as I
11 understand it, sir, when you learned from the police that
12 Mr. Silmsler no longer wanted to proceed, you would have
13 spoken to Staff Sergeant Brunet?

14 **MR. MacDONALD:** Yes.

15 **MR. ENGELMANN:** And ---

16 **MR. MacDONALD:** Heidi was present.

17 **MR. ENGELMANN:** I'm sorry?

18 **MR. MacDONALD:** Heidi was present as well.

19 **MR. ENGELMANN:** All right. And did you in
20 fact advise them to make sure that Mr. Silmsler could still
21 proceed? In other words, that the civil settlement would
22 not affect the police investigation?

23 **MR. MacDONALD:** Well, they showed me the
24 Sean Adams letter, or at least the Silmsler letter witnessed
25 by Mr. Adams, and I said -- I was still of the impression

1 that this man could be drawn back -- interested in drawing
2 back into the criminal proceedings. So I said just go back
3 and tell him that he is -- we intend to continue and
4 whether he's content or not with the civil proceedings,
5 we're still interested in going criminally.

6 **MR. ENGELMANN:** And you say that, sir, in
7 your statement at 12:33 to the OPP, at the bottom of Bates
8 page 879, 7055879.

9 **MR. MacDONALD:** That's my July '94?

10 **MR. ENGELMANN:** Right. You say:

11 "I instructed the police after I talked
12 to Malcolm MacDonald. 'Listen, aside
13 from this civil settlement, aside from
14 him now directing you, he doesn't want
15 to proceed criminally. Contact his
16 lawyer. Get a spin from what his
17 lawyer is going to say'."

18 Then you contact the complainant afterwards
19 and you make it clear to the complaintant, right?

20 **MR. MacDONALD:** I actually had a meeting at
21 Luc Brunet's office.

22 **MR. ENGELMANN:** All right.

23 **MR. MacDONALD:** That's where we discussed
24 this.

25 **MR. ENGELMANN:** And that was a meeting on

1 September 8th, sir?

2 **MR. MacDONALD:** About that, yeah.

3 **MR. ENGELMANN:** All right.

4 And, sir, you indicate, on the following
5 page, that the police contact you again -- towards the
6 bottom of that page -- sorry:

7 "They contacted me again. They told me
8 they tried to talk to him into
9 proceeding. He just said no thanks,
10 not interested, and so the police
11 essentially said now what the heck do
12 we do? So I conferred with Brunet at
13 the time..."

14 And it follows on the next page.

15 **MR. MacDONALD:** I believe the way it
16 transpired is, I told Luc at our -- at that meeting at CIB
17 to go and tell the fellow that we're still inclined to
18 investigate the criminal case and Luc said, "Well, I
19 intended to do that" or "I had done that anyway".

20 And he reported back to me the first time --
21 or either he or Heidi reported back to me that the fellow
22 said he was disinclined to continue, so I told him to go
23 back a second time and urge him further in this, and I
24 believe Heidi reported to me the second time that he was
25 more -- he displayed more anger and saying, "Why should I

1 do anything for you guys? You didn't do anything for me
2 when I needed you so why should I cooperate now?" I
3 remember getting that word back from Heidi as well, the
4 frustration that he had expressed.

5 **MR. ENGELMANN:** On the complainant's part?

6 **MR. MacDONALD:** Yes.

7 **MR. ENGELMANN:** Yeah, and would you have
8 heard that he'd been frustrated about how long things had
9 taken and there had been no action or words to that effect?

10 **MR. MacDONALD:** Yes, at times in the spring
11 months, he'd referred to frustration at delay and then at
12 other times, you know, within a day or a week following,
13 the next time Heidi had contact with him, he would say --
14 or he did at least on one occasion say that, you know,
15 there's no rush, you guys. Do what you have to do, I know
16 it's complex, or words to that effect.

17 Heidi narrated that exchange with me -- with
18 him, pardon me.

19 **MR. ENGELMANN:** All right.

20 And on Bates page 82, you talk about a
21 meeting with Luc Brunet.

22 **MR. MacDONALD:** That's the meeting I just
23 referred to, yeah.

24 **MR. ENGELMANN:** Right. And when you talked
25 to him about having a reluctant complainant?

1 **MR. MacDONALD:** Yeah.

2 **MR. ENGELMANN:** All right. And you -- this
3 is a meeting you have in-person at his office or it's a
4 meeting you have in-person in any event; correct?

5 **MR. MacDONALD:** Yes, sir.

6 **MR. ENGELMANN:** And at this point, does he
7 ask you to provide him with a letter?

8 **MR. MacDONALD:** I thought that he asked for
9 the letter in a subsequent phone conversation, but I may be
10 wrong. It may have been twice that we spoke in person.

11 **MR. ENGELMANN:** All right.

12 When you say, at the bottom of the page --
13 you say:

14 "I told him if you have a reluctant
15 complainant, you don't feel you have
16 grounds, part of the reason you don't
17 feel you have grounds is because you
18 have a reluctant complainant. It's a
19 bit circular but the other part of the
20 reason is because of your earlier
21 problems with the investigation then
22 the answer is simple, no RPG, no
23 charge. He asked me again. He phoned
24 me a couple of days afterwards and
25 said, "Listen, I just want to cover my

1 tail here with the Cornwall Police
2 Service brass, the supervisors. Would
3 you please sort of give me a legal
4 opinion on the stage what we're at
5 now?"

6 And then he writes to you requesting that
7 legal opinion on September 9th?

8 **MR. MacDONALD:** Well, he asked -- that
9 letter that he wrote to me I believe refers to the comment
10 on the ability to compel a reluctant sexual assault victim
11 to testify.

12 **MR. ENGELMANN:** Yes.

13 **MR. MacDONALD:** To cooperate.

14 **MR. ENGELMANN:** Yes.

15 **MR. MacDONALD:** Yes, and I make reference to
16 that in my response letter.

17 **MR. ENGELMANN:** Right. And just to go back
18 to that letter again for a second, and I'm sorry to jump
19 around, which is Exhibit 300 ---

20 **MR. MacDONALD:** My letter to Luc?

21 **MR. ENGELMANN:** Yes. He says he's
22 confirming that telephone conversation ---

23 **MR. MacDONALD:** Yes, sir.

24 **MR. ENGELMANN:** --- that you've just had.

25 **MR. MacDONALD:** Right.

1 **MR. ENGELMANN:** And he mentions, as we've
2 indicated, receiving the correspondence from Malcolm
3 MacDonald's office, and that would have been shown to you,
4 right? That was attached?

5 **MR. MacDONALD:** I believe I saw that, yes.

6 **MR. ENGELMANN:** Yeah.

7 **MR. MacDONALD:** At the time.

8 **MR. ENGELMANN:** And, sir, did you -- did you
9 think it was odd at the time that the lawyer for the priest
10 was sending a letter enclosing a statement from the
11 complainant, saying he no longer wished to proceed with
12 criminal charges?

13 **MR. MacDONALD:** Yes, I thought that it
14 reflected his belief that this thing would be completed as
15 a result of the complainant reaching a civil settlement and
16 no longer being inclined to proceed with the criminal
17 investigation.

18 **MR. ENGELMANN:** Did it concern you that the
19 priest's lawyer is sending you this direction signed by
20 Silmsner saying, "I don't want police, I don't want you to
21 deal with this any more", and it's being sent off to Luc
22 Brunet by Malcolm MacDonald?

23 **MR. MacDONALD:** Well, it concerned me that
24 he didn't seem to listen to the second part of the
25 conversation that -- the second conversation we had where I

1 told him, "As you know, this will continue", and he said,
2 "Yes, yes. I know, I know."

3 You know, I'm still going on the basis that
4 these lawyers were acting in good faith when they were
5 conferring with me, and so I thought he was still trying to
6 be -- that Mr. MacDonald was still trying to be open and
7 forthright in letting me know the conduct of their
8 discussions.

9 **MR. ENGELMANN:** And in his letter to you, he
10 does say:

11 "It's my understanding after our
12 conversation, that your office does not
13 prosecute without the full cooperation
14 of the victim. I'm anxiously awaiting
15 your direction."

16 Okay?

17 **MR. MacDONALD:** M'hm.

18 **MR. ENGELMANN:** And, again, to understand
19 what's going on for that victim and why the victim is --
20 alleged victim is acting the way he is, did you or the
21 Cornwall Police Service officers that you were dealing with
22 ever stop and think about, maybe we should look at this
23 settlement document to see if it's giving this particular
24 alleged victim some marching orders?

25 **MR. MacDONALD:** No, I didn't. I was going

1 on the assumption they're all the same.

2 I was going on the assumption that
3 independent counsel, Sean Adams, would have told this
4 fellow that any bar on criminal proceedings is
5 unenforceable if not illegal -- and illegal. And I was
6 going on the assumption that everybody was acting -- all
7 counsel were acting in good faith and diligently.

8 **MR. ENGELMANN:** Now, you write back to Staff
9 Sergeant Brunet.

10 **MR. MacDONALD:** Yes.

11 **MR. ENGELMANN:** And that's Exhibit 301, so
12 it's the next document in the binder.

13 **MR. MacDONALD:** Thank you.

14 **MR. ENGELMANN:** And it's a letter dated
15 September 14th, 1993.

16 And in your letter, you confirm that it is
17 your policy not to compel victims of sexual crimes to
18 proceed against their wishes.

19 **MR. MacDONALD:** I -- correct. I believe it
20 to be a common practice, if not written policy, across the
21 entire province.

22 **MR. ENGELMANN:** You also indicate that the
23 officer, being presumably Heidi Sebalj, was tentative on
24 the issue of RP&G before this so-called settlement -- and
25 you put that in quotes; correct?

1 **MR. MacDONALD:** Yeah, the -- you see in this
2 letter I'm responding here. I'm referring not only to the
3 notion of compelling reluctant sexual assault victims to
4 proceed, but I also refer to the rest of the investigation,
5 the other problems with the investigation. The reason why
6 I did that was because the conversation I had with Lucien
7 before -- when he asked for the letter and just as he is
8 about to send me this -- the prior exhibit? We also
9 discussed the fact that without the victim we still don't
10 have a case.

11 I recall asking Heidi in Luc's presence,
12 "Are you any nearer RPGs?" because of this individual,
13 whose name I forget, who would not make a complaint but
14 would support Mr. Silmser. And both of them were, "You
15 know, we're still -- without the complainant we're still a
16 long way from ready to proceed with the charge", but, you
17 know, they were interested again. The case was getting
18 stronger.

19 **MR. ENGELMANN:** All right.

20 **MR. MacDONALD:** The investigation was
21 leading from a weak suspicion to a strong suspicion.

22 **MR. ENGELMANN:** All right. In his letter to
23 you, he doesn't refer to that issue at all, right? He
24 doesn't ask you ---

25 **MR. MacDONALD:** No.

1 **MR. ENGELMANN:** --- or doesn't mention
2 anything about reasonable and probable grounds.

3 **MR. MacDONALD:** No. He asked me for a CYA
4 letter and I wanted to give him one that covered not only
5 the question of forcing a witness but the other issues that
6 we discussed in our phone call.

7 **MR. ENGELMANN:** So you give him even more
8 than he asks for in his letter?

9 **MR. MacDONALD:** Yeah, yeah.

10 **MR. ENGELMANN:** All right.

11 **THE COMMISSIONER:** I'm interested in the
12 last portion of the first paragraph where you say that he,
13 meaning Silmser:

14 "...has evidently used this threat of
15 criminal prosecutions as a means of
16 furthering his efforts to gain monetary
17 settlement."

18 **MR. MacDONALD:** Yeah, we ---

19 **THE COMMISSIONER:** How did you come to that
20 conclusion?

21 **MR. MacDONALD:** Well, I presumed bad faith
22 on Mr. Silmser's part at that point. I'm thinking -- the
23 three of us presumed that now he had his money, he wanted
24 to use us to get his money and he succeeded. I was wrong.

25 **THE COMMISSIONER:** Yeah.

1 **MR. ENGELMANN:** I'm actually going to come
2 to that, sir.

3 **THE COMMISSIONER:** Okay, sorry.

4 **MR. ENGELMANN:** No, no. No. I'll try it
5 maybe from a slightly different angle, but you -- in this
6 letter you say -- you refer to the settlement as a "so-
7 called settlement" and you put that in brackets, and I'm
8 wondering what it is you were trying to convey by that.
9 You clearly were -- had some concerns about the settlement
10 because you said "so-called" and you put in quotes
11 "settlement", and I'm wondering what were you trying to
12 convey? That there was something that was not valid about
13 the settlement?

14 **MR. MacDONALD:** Well, I knew there was a
15 settlement at the point -- at that point, not just that it
16 had been hovering in the course of final discussions. I
17 don't recall why I said that.

18 **MR. ENGELMANN:** Because at this point in
19 time you don't know anything about an illegal clause in the
20 settlement.

21 **MR. MacDONALD:** No, no.

22 **MR. ENGELMANN:** And yet you're concerned
23 about the settlement.

24 **MR. MacDONALD:** You know, I'd be speculating
25 now if I said it's probably because it was a so-called

1 settlement but a settlement over what? There was two or
2 three different versions of what they were settling over,
3 you know. That's probably the -- I can't think of another
4 reason why I would have said that. I don't recall.

5 **THE COMMISSIONER:** But what are the two or
6 three things they're settling?

7 **MR. MacDONALD:** Was the Church non-
8 supportive of he and his mom in the early years, which was
9 one explanation I got from Malcolm; the complainant's
10 allegation that he was abused by this priest; or Jacques
11 Leduc's explanation for the settlement.

12 **THE COMMISSIONER:** Which was?

13 **MR. MacDONALD:** He was in need of
14 counselling, he had a difficult life, and they wanted to
15 support him with the counselling.

16 So, you know, I don't -- I can't think of
17 another reason why, although I do recall the settling and
18 I'm thinking -- well, at one point I -- as I was listening,
19 I guess, to either Jacques or Malcolm or both, I'm
20 thinking, "Well, what are you settling here?" You know, it
21 was ---

22 **MR. ENGELMANN:** Again, it would be good to
23 have asked to see the document; correct?

24 **MR. MacDONALD:** Well, if I'd have suspected
25 that clause was in there I would have wanted to see it. I

1 just didn't think it would be there.

2 **MR. ENGELMANN:** Would it be fair to say,
3 sir, if you're consulted about a civil settlement in the
4 course of a criminal investigation and/or prosecution,
5 you're certainly going to ask to see it in future?

6 **MR. MacDONALD:** Well, I'm going to ask to do
7 a lot of things differently.

8 **MR. ENGELMANN:** All right.

9 Sir, you make several comments regarding
10 Mr. Silmsen in the letter, the one that the Commissioner
11 just read to you, that he's evidently used this threat of
12 criminal prosecutions as a means of furthering his efforts
13 to gain monetary settlement.

14 **MR. MacDONALD:** Yeah.

15 **MR. ENGELMANN:** You also say:

16 "...that the case is fraught with (due
17 to his own conduct) a very non-credible
18 complainant saddled with an evident
19 ulterior motive for making these
20 allegations."

21 And you also say at the end:

22 "This is especially so when that
23 reluctant witness [meaning Mr. Silmsen]
24 will be 'crucified' in cross-
25 examination."

1 MR. MacDONALD: Yeah.

2 MR. ENGELMANN: And you'd agree with me that
3 those three statements are all opinions?

4 MR. MacDONALD: Well, opinions that were
5 reported to me primarily by Heidi and that I agreed with or
6 at least it made sense. Her conclusions made sense based
7 on what she was explaining to me about information he'd
8 provided early on that proved to be unfounded on two key
9 points about showing up for meetings intoxicated or not
10 showing up at all, just seemingly not on good terms with
11 Heidi.

12 I've since learned that apparently he also
13 said he didn't want a woman investigator. I didn't know
14 that at the time. But clearly the individual was not --
15 Mr. Silmsner rather, was not conferring regularly and openly
16 with Heidi during the times that Heidi was reporting back
17 to me.

18 So I was of the -- I know now but at the
19 time it all seemed to make sense to me, that this fellow
20 pursued a civil settlement and didn't provide the statement
21 that I'd ask he provide in detail -- rather, that he
22 provide details on the original statement with certain
23 components, who, what, where, what was done to you by whom
24 and what place and who witnessed it. And with his
25 disinclination to provide those details, combined with his

1 desire to get this settlement, I thought he's taking
2 advantage of the police.

3 **MR. ENGELMANN:** All right.

4 Well, you'd agree with me that your -- the
5 opinions you express in this letter, the three opinions are
6 extremely negative towards Mr. Silmsler and his complaint?

7 **MR. MacDONALD:** Yes.

8 **MR. ENGELMANN:** And I'm assuming that you
9 formed those opinions based on things that were told to you
10 either by Constable Sebalj or by Staff Sergeant Brunet?

11 **MR. MacDONALD:** Yeah, or in the
12 conversations with the two lawyers.

13 **MR. ENGELMANN:** Okay. So those would have
14 been your -- those would have been the individuals
15 providing you with the factual basis for your opinions?

16 **MR. MacDONALD:** Yes, sir.

17 **MR. ENGELMANN:** Either Constable Sebalj,
18 Staff Sergeant Brunet, Malcolm MacDonald or Jacques Leduc?

19 **MR. MacDONALD:** Yeah, mostly Heidi though.

20 **MR. ENGELMANN:** And you never met him to
21 either assess his credibility or his complaint in any way?

22 **MR. MacDONALD:** No, sir.

23 **MR. ENGELMANN:** And I take it from at least
24 part of what you're saying here, it's your understanding
25 that it was Silmsler who was seeking the settlement from the

1 Diocese and not the other way around?

2 **MR. MacDONALD:** Yes, sir.

3 **MR. ENGELMANN:** All right.

4 And would it be fair to say that the fact
5 was that as far as you knew Silmser seeking a civil
6 settlement, that affected his credibility in your eyes as a
7 complainant?

8 **MR. MacDONALD:** Well, when a criminal case -
9 - if and when a criminal case were to come about counsel --
10 the defence counsel would be probing vigorously to the
11 point of prospect of conviction on motives for making for
12 the allegations.

13 So once the civil settlement was reached --
14 this is something that we learned in the Alfred Boys School
15 prosecutions, is once you put that out of the way and you
16 show the civil settlement is no -- efforts at securing
17 money in a civil settlement is no longer a motive or an
18 apparent motive to proceed with the criminal case then
19 you've sort of to a large extent dampened any concern about
20 oblique motive for making a criminal allegation.

21 **MR. ENGELMANN:** Just getting back to your
22 concern, sir, and your opinions, it clearly affected your
23 opinion, the fact that you thought he was seeking
24 compensation from the Diocese?

25 **MR. MacDONALD:** But he took compensation.

1 **MS. McINTOSH:** No, I think the answer that
2 the witness just gave is that ---

3 **THE COMMISSIONER:** No, no, Ms. McIntosh, you
4 have to go to the microphone.

5 **MS. McINTOSH:** I'm sorry. I think the
6 answer -- I think my friend is only giving half the answer
7 that the witness just gave. In other words, it's not just
8 the civil settlement. If he wanted to go ahead after the
9 civil settlement that wouldn't have, in Mr. MacDonald's
10 view, affected his credibility, is what I thought I heard
11 him say.

12 **THE COMMISSIONER:** Well, it would have
13 enhanced his credibility in this witness' eyes.

14 **MR. ENGELMANN:** Fair enough.

15 **THE COMMISSIONER:** Okay.

16 **MR. ENGELMANN:** Now, I want to just go back,
17 sir, and get a sense as to what information you had and
18 what information you didn't have. We've looked at your
19 statement to the OPP and about some of the information you
20 had about the Silmsler matter prior to your writing the
21 letter of September 14th.

22 I just -- I want to discuss with you perhaps
23 some information that you might not have had before you
24 provided your opinion in that letter and then I'll ask you
25 at the end whether this information may have had some

1 effect on your opinion.

2 Were you aware at the time you wrote your
3 letter in September that Mr. Silmsler had met with a priest
4 in Ottawa by the name of Monsignor Schonenbach from the
5 Ottawa Diocese in early December of 1992?

6 **MR. MacDONALD:** No, sir.

7 **MR. ENGELMANN:** Were you aware that
8 Monsignor Schonenbach had written a letter to a local
9 priest here, Monsignor McDougald of the Diocese of
10 Alexandria-Cornwall, in which he indicated that he believed
11 Mr. Silmsler to be credible?

12 **MR. MacDONALD:** No, sir.

13 **MR. ENGELMANN:** Were you aware that in that
14 original letter that Mr. Schonenbach wrote that David
15 Silmsler told him he was looking for an apology from Father
16 MacDonald that he could show his mother?

17 **MR. MacDONALD:** I don't know about that
18 letter.

19 **MR. ENGELMANN:** All right.

20 You weren't aware, sir, that he said ---

21 **THE COMMISSIONER:** Just a minute. Mr.
22 Neville is coming to put in two words which is "for
23 starters."

24 **MR. ENGELMANN:** Well, I'm about to say that,
25 sir.

1 **THE COMMISSIONER:** All right.

2 Well, I'm just cutting -- I'm just saving
3 Mr. Neville the steps to tell you that.

4 **MR. ENGELMANN:** Were you aware that Silmser
5 said that at least for starters he was just looking for an
6 apology letter?

7 **MR. MacDONALD:** No.

8 **MR. ENGELMANN:** All right.

9 **MR. MacDONALD:** I had the impression that by
10 the time Heidi came to me he was looking for more than an
11 apology. I don't know why and I don't know what transpired
12 in December of '92.

13 **MR. ENGELMANN:** And were you aware, sir,
14 that on at least three occasions in January of 1993 that he
15 indicated to Ms. Sebalj or to Chief Shaver that he was
16 reluctant to speak with a female officer to have a female
17 officer investigate his allegations?

18 **MR. MacDONALD:** No, Heidi didn't tell me
19 that. Heidi told me she had difficulty with him but she
20 didn't specify it in those clear terms, but I knew she was
21 having -- initially having difficulty managing him,
22 however, I also knew that was improving somewhat as time
23 went by.

24 **MR. ENGELMANN:** And were you advised that
25 even at his initial interview with the three -- well, were

1 you aware that he was interviewed on January 28th by three
2 Cornwall Police Service officers?

3 **MR. MacDONALD:** I don't recall that. I
4 suspect that Heidi -- some of the information she may have
5 garnered from that interview she would have given me
6 piecemeal but I didn't see the whole statement.

7 **MR. ENGELMANN:** All right.

8 **MR. MacDONALD:** I didn't see that interview.

9 **MR. ENGELMANN:** Were you aware that even at
10 the beginning of that interview, in accordance with her
11 notes, she had to plead with Mr. Silmser to allow her to
12 stay in the room, again the female officer issue?

13 **MR. MacDONALD:** No, I didn't know that.

14 **MR. ENGELMANN:** All right.

15 **THE COMMISSIONER:** Can you wind her down
16 there, Mr. Engelmann? It's close to 5:00.

17 **MR. ENGELMANN:** Sir, in your experience, you
18 would have dealt with some male victims of child sexual
19 abuse, certainly out of Alfred?

20 **MR. MacDONALD:** Yes.

21 **MR. ENGELMANN:** And did you ever come across
22 male victims or alleged victims who were reluctant to get
23 into the details?

24 **MR. MacDONALD:** Yes, it's not uncommon.

25 **MR. ENGELMANN:** And, sir, were you aware

1 some of them being even more reluctant to get into those
2 details with women?

3 **MR. MacDONALD:** Yes.

4 **MR. ENGELMANN:** Would you agree, sir, that
5 that might explain some of the difficulty that Constable
6 Sebalj would have as a female officer getting information
7 from ---

8 **MR. MacDONALD:** It could.

9 **MR. ENGELMANN:** --- Mr. Silmsner?

10 **MR. MacDONALD:** It's more often the other
11 way around where male victims don't want to speak to male
12 officers.

13 **MR. MacDONALD:** You've seen that as well?

14 **MR. MacDONALD:** That's more common than the
15 other way around. They usually prefer a woman. I don't
16 have anything other than anecdotal proof of that but that's
17 my impression.

18 **MR. ENGELMANN:** You were aware -- she had
19 indicted to you that she was having difficulty getting some
20 details in getting information from him ---

21 **MR. MacDONALD:** Yes.

22 **MR. ENGELMANN:** --- from time to time?

23 **MR. MacDONALD:** Specific details that I was
24 asking here to get, she'd say, "I couldn't get that, I
25 couldn't get this, I couldn't get that."

1 **MR. ENGELMANN:** Sir, I was going to just
2 take the witness, briefly, to those notes of the January
3 28th meeting, but perhaps ---

4 **THE COMMISSIONER:** Tomorrow.

5 **MR. ENGELMANN:** --- if you wish to ---

6 **THE COMMISSIONER:** Tomorrow?

7 **MR. ENGELMANN:** Yes.

8 **THE COMMISSIONER:** Tomorrow morning, 9:30.
9 Thank you.

10 **THE REGISTRAR:** Order; all rise. A
11 l'ordre; veuillez vous lever.

12 This hearing is adjourned until tomorrow
13 morning at 9:30 a.m.

14 --- Upon adjourning at 4:59 p.m. /

15 --- L'audience est adjournée à 16h59

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C E R T I F I C A T I O N

I, Dale Waterman a certified court reporter in the Province of Ontario, hereby certify the foregoing pages to be an accurate transcription of my notes/records to the best of my skill and ability, and I so swear.

Je, Dale Waterman, un sténographe officiel dans la province de l'Ontario, certifie que les pages ci-hautes sont une transcription conforme de mes notes/enregistrements au meilleur de mes capacités, et je le jure.



Dale Waterman, CVR-CM